85989-2



NO. _____
Court of Appeals No. 39546-1-II



IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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CLARK COUNTY, WASHINGTON and CITY OF LA CENTER,
Petitioners for Review,

GM CAMAS, LLC., MacDONALD LIVING TRUST and
RENAISSANCE HOMES,
Respondents Below,

v.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS
REVIEW BOARD, JOHN KARPINSKI, CLARK COUNTY NATURAL
RESOURCES COUNCIL and FUTUREWISE,
Appellants.



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# AMENDED JOINT PETITION FOR REVIEW OF CLARK COUNTY AND CITY OF LA CENTER

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## I. IDENTITY OF PETITIONERS

Petitioners are respondents Clark County, Washington and the City of LaCenter, Washington.

## II. COURT OF APPEALS' DECISION

Clark County and the City of LaCenter seek review of the Court of Appeals published decision in *Clark County v. Western Washington Growth Management Hearings Board*, Case Number 39546-1-II, issued April 13, 3011. By its decision, the Court of Appeals largely affirmed the decision of the Western Washington Growth Management Hearings Board (WWGMHB, or Growth Board) in *Karpinski v. Clark County,* WWGMHB Case No. 07-02-0027.

## III. ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals conflict with RCW 36.70A.302 and numerous appellate decisions on finality in holding that Clark County Ordinance 2007-09-13 is not final while subject to pending appeal?

2. Did the Court of Appeals violate RCW 36.70A.320(1) and 36.70A.302(2) in holding that the Growth Board retains authority over lands annexed to the cities of Camas and Ridgefield, as to which development agreements made with those cities pursuant to RCW 36.70B.170 before an order of invalidity was issued by the Growth Board?

3. Did the Court of Appeals decision conflict with the decisions of the Supreme Court in *City of Arlington v. Central Puget Sound Growth Management Hearings Bd. (CPSGMHB)*[1] and *Lewis County v. WWGMHB*[2], of the Court of Appeals in *City of Redmond v.CPSGMHB*[3], in holding that "substantial changes in the land" were required in order for the county to revise the designation of agricultural resource lands in Clark County?

4. Did the Court of Appeals decision conflict with the Growth Management Act (GMA) and the Supreme Court's decisions in *City of Arlington*[4] and *Quantum Development v. CPSGMHB*[5], in that the Court affirmed both the Growth Board's failure to defer to Clark County in planning for the community, and its misapplication of the standard of review, substantial evidence requirements, and burden of proof?

## IV. STATEMENT OF THE CASE

### A. Clark County's 2007 Comprehensive Plan Update.

In September 2004, the County adopted an updated 20-year growth management comprehensive plan (2004 Plan). Various parties

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[1] 164 Wn.2d 768, 193 P.3d 1077 (2008).

[2] 157 Wn.2d 488, 139 P.3d 1096 (2006).

[3] 116 Wn.App. 48, 55-56, 65 P.3d 337 (2003).

[4] 164 Wn.2d 768, 193 P.3d 1077 (2008).

[5] 154 Wn.2d 224, 110 P.3d 1132 (2005).

filed 14 different petitions for review of the 2004 Plan with WWGMHB.[6]

Prior to the Growth Board's hearing on the merits of the appeals, most of the petitioners had reached agreements with the county, and moved to dismiss their petitions.[7] Ultimately, only the Clark County Natural Resources Council (CCNRC) and 1000 Friends of Washington[8] argued as petitioners.[9] Neither challenged the mapping or designation by the 2004 Plan of agricultural lands of long term commercial significance (ALCS),[10] and WWGMHB's decision did not address that issue. WWGMHB found that the adoption of the 2004 Plan was not clearly erroneous in any respect argued by petitioners.[11] The record of the 2004 proceedings is not part of the record in this appeal.

Before the appeal of the 2004 Plan concluded, Clark County again reviewed its comprehensive plan, working extensively with the interested public, including the representatives of some of the parties that had settled appeals of the 2004 Plan.[12] Following a more current interpretation of

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[6] *Building Association of Clark County v. Clark County*, WWGMHB Case No. 04-2-0038c (August 22, 2005), Final Decision and Order, slip op. at 1.

[7] *Id.*, Appendix A, slip op. at 59-63.

[8] During the pendency of this appeal, 1000 Friends of Washington changed its name to Futurewise.

[9] *Id.* at 64-65.

[10] *Id.* at 7-8.

[11] *Id.* at 17, 21, 30, 34, 39, 46.

[12] Ex. 20, 90, 135, 143, Clark County's WWGMHB brief, No. 07-2-0027 (County Brief).

population projections from the state Office of Financial Management, the county again looked at land capacity for expected population growth and employment-related development.[13] The county determined that more growth than that projected in 2004 would occur.[14] On September 25, 2007, the Board of Clark County Commissioners (BOCC) incorporated a higher growth rate when it enacted Ordinance 2007-09-13, adopting its revised 20-year Growth Management Comprehensive Plan 2004-2024 (2007 Plan). The 2007 Plan expanded the county's urban growth areas (UGA's) by approximately 12,000 acres, including 4,352 acres in 19 agricultural viability study areas (Areas) that the 2007 Plan redesignated from ALCS to urban. For each redesignated Area, the county determined that the land did not meet the definition of ALCS.[15] The effective date of the county's adoption was January 1, 2008.

**B. Clark County's decision to add Areas LB-1, LB-2 and LE to LaCenter's Urban Growth Area.**

Clark County's 2004 GMA update process culminated in a modest expansion of LaCenter's Urban Growth Area (UGA) across (south of) Lewis River, but still approximately 1.5 miles from I-5. The 2005 WGMHB

[13] County Brief, Ex. 90, 135, 158, 5127.

[14] *Id.;* Final Environmental Impact Statement, Vol. 3, pages 2-3.

[15] County Brief, Ex. 6605, 6606, 6430, 6548, Ord. 2007-09-13 at 9-10.

decision on the 2004 Plan[16] did not address or consider the LaCenter expansion areas that are the subject of the current appeal. In other words, in 2004, the county did not make any affirmative decision about the land now comprising Areas LB-1, LB-2 or LE, and no one then argued before the Growth Board whether they should be included in LaCenter's UGA. No part of the record from the 2004 proceeding or decision is in the record of the County's 2007 decision, which is at issue in this appeal.

### C. 2008 Decision of the Western Washington Growth Management Hearings Board.

Futurewise, John Karpinski and CCNRC (together, Karpinski) appealed the county's 2007 Plan adoption to the Growth Board. On May 14, 2008, the Growth Board issued a Final Decision and Order, which was reissued as amended on June 3, 2008 (FDO). With respect to 11 of the Areas in dispute, the FDO held that the county's actions had not complied with GMA, and were invalid.[17] The Growth Board affirmed the redesignation as urban of eight other agricultural study Areas.

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[16] *See, Bldg. Assoc. of Clark County v. Clark County*, Case No. 04-2-0038c, Amended Final Decision and Order, issued Nov. 23, 2005.

[17] The 11 areas whose redesignations were invalidated by the Growth Board included:

a. One area placed within the Washougal UGA – Area WB;
b. Two areas placed within the Camas UGA – Areas CA-1 and CB;
c. Three areas placed within the Vancouver UGA – Areas VA, VA-2, and VB;
d. One area placed within the Battle Ground UGA – Area BC;
e. One area placed within the Ridgefield UGA – Area RB-2; and
f. Three areas placed within the LaCenter UGA – Areas LB-1, LB-2 and LE.

Areas LB-1, LB-2 and LE were among those whose redesignations were invalidated by the Growth Board. The Growth Board focused its on the predominantly agricultural soil types, and lack of existing, adjacent urban development and services, while the county had found that urban development and services were proximate, and that these Areas were likely to be more intensely developed in the near future.

In April 2008, before the first version of the FDO issued, Camas annexed all of Area CB and most of Area CA-1, and Ridgefield annexed most of Area RB-2. Before 2010, no person attempted to appeal, enjoin, or otherwise prevent the effectiveness of the annexations. Also prior to the May FDO, property owners in the annexed areas entered into development agreements with Ridgefield and Camas.

**D. Proceedings Following the Growth Board's Decision.**

Several parties, including the petitioners here, petitioned Clark County Superior Court for review of the FDO.[18]

The Clark County Superior Court reversed the FDO as to Areas WB, CB, VA, VA-2, LB-1, LB-2, and LE, holding that the Growth Board had failed to defer to the county's planning decisions as required by GMA, and

[18] The City of LaCenter sought direct review from the Court of Appeals, but the Growth Board refused to issue a Certificate of Appealability, ruling that no fundamental and urgent regional or statewide issues had been raised, and that the proceeding was unlikely to have significant precedential value. *Karpinski,* WWGMHB No. 07-02-0027, Denial of Application for Direct Review, (July 31, 2008).

that these areas did not meet the definition of ALCS. The court ordered the reversal, as stipulated, of the FDO regarding the GM Camas property, which was most of Area CA-1. The Superior Court also held that the appeal was moot as to Area RB-2. The court affirmed the FDO as to Areas VB and BC.

Following the Superior Court's decision, Clark County removed Areas VB and BC, and the unannexed parts of Areas CA-1 and RB-2 from their respective urban growth areas, and redesignated them as ALCS.

In subsequent compliance proceedings pursuant to RCW 36.70A.330, the Growth Board acknowledged that neither Clark County nor it retained jurisdiction over the lands that had been annexed by cities. The Growth Board ruled that with respect to Areas BC and VB and the unannexed parts of CA-1 and RB-2, the county was in compliance with GMA, and invalidity was lifted concerning those areas. With regard to Areas VA, VA-2, WB, LB-1, LB-2 and LE, the Growth Board held the county's compliance status in abeyance until the conclusion of the appeal.

Karpinski sought review by the Court of Appeals of the Superior Court's reversals of the FDO.

**E. The Court of Appeals.**

Before argument on the merits, the Court of Appeals *sua sponte* requested supplemental briefing from all the parties to the appeal – and from some non-parties – on whether the Growth Board retained jurisdiction over

lands that had been annexed before issuance of the FDO.

The court held that the county's legislation was not final while under pending appeal, and that the Growth Board did retain jurisdiction over the annexed lands. The court remanded the designations of Areas VA, VA-2 and WB to the Growth Board for further consideration. The court affirmed the FDO in holding the de-designations of Areas LB-1, LB-2, LE, CA-1, CB, and RB-2 noncompliant with GMA and invalid.[19] The court repeatedly based its analysis, in part, on the designations of Areas by the 2004 Plan as ALCS, and the Growth Board's decision affirming the 2004 Plan.[20]

## V. ARGUMENT

### A. The Court of Appeals' Erroneous Decision on Finality Involves a Matter of Substantial Public Interest.

The Court of Appeals decided that Clark County's 2007 Plan was not final legislation, and announced as follows:

> "County decisions related to the GMA that are timely challenged and pending review before the Growth Board and/or an appellate court are not final and cannot be relied on until either (1) the Growth Board's final order is not appealed or (2) the county's decisions are affirmed and a final order or mandated opinion is filed by a court sitting in its appellate capacity."[21]

This holding, which directly conflicts with RCW 36.70A.302(2), and which is supported by no case law, has the potential to create great mischief,

[19] *Clark County v. WWGMHB*, slip op. at 35-39

[20] *Clark County v. WWGMHB*, slip op at 22-23, 27.

[21] *Clark County v. WWGMHB*, slip op. at 14.

to the detriment of local communities and governments. Thus, the Court of Appeals decision in this regard is subject to reversal pursuant to RCW 34.05.570(3)(d) and is appropriate for review by this Court pursuant to RAP 13.4(b)(4).

RCW 36.70A.302(2) states, in relevant part:

> "A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county."

Following the holding of the Court of Appeals on finality would nullify this statute; the mere filing of a petition for review at the Growth Board could prevent the challenged legislation from becoming final for years. Further, a decision of invalidity would become retroactive as to rights that otherwise would have already vested. In this case, the county's updated comprehensive plan was adopted in 2007, and would not yet be final with regard to nine Areas, affecting five cities and the unincorporated county. No local government would expend resources to plan for affected lands under these circumstances. No person could know whether to file a permit application, or at what price to buy or sell property.

Under the court's rule in this case, finality eludes legislation that is presumed valid when adopted, and that has been upheld at one or more appellate levels.

The public has a substantial interest in the finality of local planning legislation. The Court should accept review of this decision and reverse it as to the Court of Appeals new and mistaken doctrine of non-finality.

### B. The Court of Appeals' interpretation of RCW 36.70A.320(1) and 36.70A.302 substantially affects the property rights of owners and interests of Camas and Ridgefield.

Until this case, no court had thwarted the ability of property owners to annex, vest, or submit development applications on property approved under a comprehensive plan prior to an order of invalidity being issued. If the Court of Appeals decision stands, it would open potential challenges to vested approvals throughout Washington. The decision is also itself a collateral attack on local government decisions after the period to appeal them had long passed.

Local governments and private parties need certainty. Yet the Court of Appeals decision beclouds this by throwing into question a long- standing principle of Washington law.[22] This is particularly troubling, because the legislature has been aware of the gap in time between adoption of comprehensive plans and the issuance of Growth Board decisions at least since the mid 1990s.[23] Still, the legislature has chosen not to address this gap, allowing projects to vest prior to a ruling from the Growth Board. The

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[22] RCW 36.70A.302(2).

[23] ESHB 1724 (1995); ESB 6094 (1997).

Court of Appeals opinion ignores the plain meaning of the statutes to arrive at an outcome the court apparently desired.

In particular, in the Court of Appeals chastises the county for allowing the cities of Ridgefield and Camas to annex property and enter into development agreements with property owners while the properties were under appeal to the Growth Board. The decision of the court of appeals states that the Growth Board still had jurisdiction over those lands. In order for the Court to get to that holding, it had to proclaim that comprehensive plans are not final until the appeals are final. As explained earlier in this petition, this is an untenable and impractical view which undermines the intent of GMA that local communities plan their growth.

Additionally, the court's *sua sponte* treatment of this matter, which was raised by no party to the appeal, is itself impermissible as a collateral attack on the annexations of the CA-1, CB and RB-2 Areas, which occurred three years ago, and which no party had sought to appeal, stay, enjoin or otherwise challenge. This Court should accept review because of the substantial public interest in preventing such judicial action. *RAP 13.4(b)(4).*

### C. The Decision of Court of Appeals Conflicts With Supreme Court Decisions and Statutes on the Designation of Agricultural Lands.

#### 1. The Decision of the Court of Appeals Conflicts With Decisions of the Supreme Court and With Statutes that Define Agricultural Lands of Long-Term Commercial Significance.

The Growth Board held that the redesignations of ALCS as urban in Areas CA-1, CB, RB-2, LB-1, LB-2 and LE had been clearly erroneous. The Court of Appeals affirmed the holding, based on the designations of those Areas as ALCS by the 2004 Plan. In order for Clark County to have removed the agricultural designations, held the court, the county was required to show that there had been a "substantial change in the land" from 2004 to 2007.

Both the Growth Board's FDO and the Court of Appeals' decision erred in interpreting and applying the law. *RCW 34.05.570(3)(d).* The decision of the administrative agency and the Court of Appeals' affirmation of it are contrary to statutes, regulations, and controlling decisions of the Washington Supreme Court, and therefore are appropriate for review and reversal by this Court.

The Growth Board should have only examined whether it was been clearly erroneous for Clark County to conclude that the lands did not meet the criteria for designating ALCS. The Court of Appeals should have only considered whether the Growth Board made that examination. Instead, the court announced new, incorrect principles on the designation of ALCS.

RCW 36.70A.030(2) defines "agricultural land"[24] and RCW

[24] RCW 36.70A.030(2) states: " 'Agricultural land' means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable,

36.70A.030(10) continues by defining "long term commercial significance."[25]

In the decision *Lewis County v. WWGMHB*[26], this Court synthesized the statutes with precedent and administrative rules to arrive at a three-part definition, which is to be used in designating ALCS.[27]

**2. The Decision of the Court of Appeals Violates Statutes and Supreme Court Decisions on the Authority of the County to Designate Land in its Community and the Role of the Growth Board in Reviewing the Designations.**

When a county applies the three-part *Lewis County* definition in considering the designation of real property, it exercises broad discretion to balance GMA's prescribed goals, priorities, and options in full consideration of local circumstances.[28] In reviewing county actions, growth

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[24]Cont.

or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production."

[25] RCW 36.70A.030(10) states: " 'Long-term commercial significance' includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land."

[26] 157 Wn.2d 488, 139 P.3d 1096 (2006).

[27]"[W]e hold that agricultural land is land: (a) not already characterized by urban growth (b) that is primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A.030(2), including land in areas used or capable of being used for production based on land characteristics, *and* (c) that has long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses. We further hold that counties may consider the development–related factors enumerated in WAC 365-190-050(1) in determining which lands have long-term commercial significance." *(Emphasis in original.) Lewis County,* 157 Wn.2d 488, 139 P.3d 1096 (2006).

boards must therefore defer to county planning actions that are consistent with GMA's goals.[29] Comprehensive plans and amendments to plans are presumed valid upon adoption, and petitioners to growth boards bear the burden to demonstrate that county planning actions do not comport with GMA.[30]

In order to arrive at its erroneous holding on ALCS designation, the court also ignored and misapplied the law on standard of review, burden of proof, and deference.

Instead of applying the standards as written, the Court of Appeals created a new requirement for designating ALCS, and a new burden of proof, which it imposed on Clark County. Having noted that the 2004 Plan designated the disputed Areas as ALCS, and that the Growth Board upheld the 2004 designations, the Court of Appeals required the County to prove a "substantial change in the land" from 2004 to justify the 2007 de-designation from ALCS to urban designations for those Areas:

> Absent a showing that this designation was both erroneous in 2004 and improperly confirmed by the Growth Board, or that a substantial change in the land occurred since the ALLTCS designation, the prior designation should remain.[31]

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[28] RCW 36.70A.3201.

[29] *Id.*

[30] RCW 36.70A.320(1)-(2).

[31] *Clark County v. WWGMHB*, slip op at 23 *(emphasis added).*

The creation of this new higher burden of proof for de-designating agricultural land and the imposition of the burden on the county are contrary to the express language and presumption of validity in RCW 36.70A.320, the explicit direction provide by the Legislature in RCW 36.70A.3201, and the Supreme Court's decisions defining ALCS.

The Court's failure to defer to Clark County in the subjective planning judgments required under the 10 factors set out in WAC 365-190-050(1) and the *Lewis County* case is the same error committed by the Central Growth Board, and reversed by the Supreme Court in the *City of Arlington* case.[32] As the Supreme Court noted in that case:

> "...situations may exist where a county could properly designate land either agricultural or urban commercial depending on how the county exercises its discretion in planning for growth, without committing clear error. The legislature recognized this when it implemented the clear error standard of review..."[33]

In this case, the Growth Board and the Court of Appeals substituted their views for that of the county as to which of the 10 WAC factors were most important, focusing primarily on soil types, and a lack of existing, immediately adjacent or onsite urban development. The Growth Board gave

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[32] *City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 164 Wn.2d 768, 193 P.3d 1077 (2008).

[33] *Id.* at 793-94. The Supreme Court here quoted from RCW 36.70A.3021:

> "In recognition of the *broad range of discretion* that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant great deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter."

economic factors, such as the possibility of more intense development, less weight than did the county. Both the Growth Board and the Court of Appeals erred in these respects.

RCW 36.70A.130(3)(a) provides that "at least every ten years," a county shall review its urban growth areas (emphasis added). No statute or administrative regulation prohibits more frequent review of the UGA, as long as such reviews occur no more than once yearly.[34] Further, no law provides that a subsequent review and revision of an urban growth area, and the any resulting revision of plan designations for ALCS is governed by standards different from those when the designations were first made.

> Instead, the Court of Appeals (Division I) and the Supreme Court have held that the requirements for designation remain the same and that the burden of proof is not shifted to the county in a de-designation.[35]

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[34] RCW 36.70A.130(2)(a).

[35] *City of Arlington*, 164 Wn.2d at 794-95. Both courts stated the following,

> In short, simply because the Board and courts previously held that the agricultural designation was not clearly erroneous in view of the record and in light of the GMA, does not mean that an urban commercial designation would be clearly erroneous in view of the same or similar record and in light of the goals and requirements of the GMA.
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> ***
>
> The superior court's decision is erroneous in another respect. Specifically, the superior court's holding that "[i]n order to re-designate the land, the County must show that there has been a change in circumstances since 1998, and that the property is no longer properly designated as agricultural resource land and Rural Freeway service" impermissibly shifts the burden away from the petitioners.
>
> ***
>
> The superior court's ruling that the County be required to show evidence of changed circumstances in order to overcome collateral estoppel and res judicata thus directly

The county did not need to show that a substantial change on the land had occurred in order to change the plan designation of land previously designated ALCS. For the Court of Appeals to uphold the Growth Board's decision because the county had not shown a substantial change, when the county had instead applied the *Lewis County* definition of agricultural land, was clear error.[36] For those reasons, this Court should review the decision of the Court of Appeals.[37]

### D. The Court of Appeals' Decision Conflicts With Supreme Court Decisions.

Comprehensive plan revisions, such as this one, are presumed valid upon adoption.[38] The Growth Board must "find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter."[39] In reviewing such legislative decisions, Growth Boards are required to defer to the County's "broad range of discretion."[40] The Legislature's intent in imposing this extremely

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[35] Cont. conflicts with the statutorily mandated burden of proof set forth in RCW 36.70A.320(2) and affirmed in *City of Redmond* II.

[36] RCW 34.05.570(3)(d)

[37] RAP 13.4(b)(1)-(2).

[38] RCW 36.70A.320(1).

[39] RCW 36.70A.320(3).

[40] *Quadrant Corp. v. CPSGMHB,* 154 Wn.2d 224, 237-238, 110 P.3d 1132 (2005); *City of Arlington v. CPSGMHB,* 164 Wn.2d 768, 193 P.3d 1077 (2008).

deferential standard of review is explicit within the statute.[41]

Had the Court of Appeals correctly applied RCW 36.70A.320, its presumption of validity, and the deference to the local decision maker it requires, the Court would have deferred to the County's weighing of the evidence. Specifically, the court would have determined whether the Growth Board had improperly reweighed evidence from LaCenter that it needed to expand to its I-5 interchange to establish a commercial and industrial economic base, that Areas LB-1, LB-2 and LE were proximate to the I-5 interchange (Exit 16), the I-5 transportation corridor and the current LaCenter city limits, and that sewer easily could be extended from the City limits to the I-5 interchange. The Court would also have deferred to Clark County's evaluation, balancing and resolution of the factors that, under *Lewis County,* determine whether land is ALCS.

Remarkably, the court held that the Growth Board was correct in failing to defer to Clark County's planning decisions, because evidence

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[41] RCW 36.70A.3201 states in part:

> "In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community *(emphasis added)*."

supported the county's adoption of the 2004 Plan, which had designated the disputed lands as ALCS. The Court of Appeals, therefore, opted to defer to the 2004 Plan, not the 2007 Plan that was at issue.

Because the 2004 Plan was not the subject of the appeal, evidence from the 2004 proceeding was not in the record of the 2007 proceedings. The Court of Appeals not only violated RCW 36.70.320 and 3021, but relied upon evidence outside the record in affirming the Growth Board's decision.

## VI. CONCLUSION.

The Court of Appeals' decision conflicts with decisions of the Washington Supreme Court and with Washington statutes in several respects. These conflicts are of significant public interest, and create significant concerns for cities and counties attempting to implement GMA in a lawful fashion that meets the needs of their communities. Petitioners therefore respectfully request that the Supreme Court grant review of the decision of the Court of Appeals in this matter.

Respectfully submitted this 16 day of May, 2011.

CITY OF LA CENTER

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Rec. 5-16-11

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Attached for filing, please find copies of Motion to Amend Joint Petition for Review, Amended Joint Petition, Certificate of Service and letter to the Clerk. Please contact this office at (360) 397-2478 if you have any questions. Thank you.

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# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

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| CLARK COUNTY WASHINGTON, CITY OF LA CENTER, GM CAMAS LLC, MacDONALD LIVING TRUST, and RENAISSANCE HOMES,<br><br>Respondents,<br><br>v.<br><br>WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS REVIEW BOARD, JOHN KARPINSKI, CLARK COUNTY NATURAL RESOURCES COUNCIL, and FUTUREWISE,<br><br>Appellants. | No. 39546-1-II<br><br>PUBLISHED OPINION |

QUINN-BRINTNALL, J. — In 2004, Clark County (County) designated the 19 land parcels at issue in this case as agricultural lands of long-term commercial significance (ALLTCS).[1] Despite identifying these parcels as having long-term commercial significance for the

[1] This opinion refers to the 19 parcels using the County's original planning designation names. The parcel names included the nearby urban growth area to which the County intended to add the parcel. The 19 parcels are City of Battle Ground parcels BB and BC; City of Camas parcels CA-1 and CB; City of La Center parcels LA, LB-1, LB-2, LC, and LE; City of Ridgefield parcels RB-1, RB-2, and RC; City of Vancouver parcels VA, VA-2, VB, VC, and VE; and City of Washougal parcels WA and WB.

agricultural industry in the County, less than three years later, in 2007, the County removed the 19 parcels from ALLTCS status. Simultaneously with the dedesignation, the County included the 19 parcels in its then existing urban growth areas (UGAs). Although the ALLTCS designation process and the redrawing of the UGA boundaries are separate processes,[2] the County blended the processes to dedesignate and incorporate the parcels into UGAs in a single proceeding.

John Karpinski, a private citizen and land owner in Clark County; the Clark County Natural Resources Council, a Washington nonprofit corporation; and Futurewise, a Washington nonprofit corporation (hereinafter collectively referred to as Karpinski), petitioned the Western Washington Growth Management Hearings Board (Growth Board)[3] for review of the County's 2007 dedesignation/UGA expansion decisions. Karpinski challenged the County's decisions on the grounds that (1) the parcels still qualified as ALLTCS, (2) the County improperly considered economic factors in deciding to dedesignate the agricultural parcels, and (3) the County improperly included lands not characterized by urban growth in its UGAs. While review of the County's dedesignations/UGA expansions was pending before the Growth Board, the cities of Camas and Ridgefield passed ordinances to annex all of the dedesignated land in parcel CB and part of the dedesignated land in parcels CA-1 and RB-2.

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[2] Former RCW 36.70A.130(1), (3) (2006). We note that under former RCW 36.70A.130(1)(c), counties may simultaneously review comprehensive plan land use elements and UGA boundaries.

[3] As of July 1, 2010, the three regional Growth Management Hearings Boards were consolidated into a single statewide board composed of seven appointed members who are then constituted into three-member panels to hear cases. LAWS OF 2010, ch. 211, §§ 4-5, 18.

The Growth Board affirmed the County's decisions with regards to eight of the challenged parcels: BB, LA, LC, RB-1, RC, VC, VE, and WA. But the Growth Board found that the County committed clear error in its decisions regarding the other 11 challenged parcels: BC, CA-1, CB, LB-1, LB-2, LE, RB-2, VA, VA-2, VB, and WB. As to these 11 areas, the Growth Board deemed the areas noncompliant with the GMA and the County's actions invalid.

The County appealed the Growth Board's decision to the Clark County Superior Court, assigning error only to the rulings on the 11 parcels that the Growth Board found noncompliant under the GMA; Karpinski did not cross-appeal.[4] In reviewing the Growth Board's rulings, the superior court affirmed in part, reversed in part, held some issues moot, and remanded to the Growth Board for further consideration.

Karpinski sought appellate review of the superior court's decision. Although Karpinski invoked our jurisdiction, because we review the Growth Board's decision, not the superior court decision affirming or reversing it, the burden to prove the propriety of the dedesignations is on the County. *Lewis County v. W. Wash. Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 497-98, 139 P.3d 1096 (2006); *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 553, 14 P.3d 133 (2000) (hereinafter referred to as *Soccer Fields*).[5] "'We apply the standards of [the Administrative Procedures Act (APA), ch. 34.05 RCW,] directly to the record before the agency, sitting in the same position as the superior court.'" *Soccer Fields*, 142 Wn.2d

[4] This case involves multiple interveners with interests in specific land areas. For ease to the reader, in this opinion we attribute almost all of the respondent parties' actions to the County. But we discuss and attribute actions to the intervening parties, as necessary, in clarifying footnotes.

[5] *Lewis County* established "*Soccer Fields*" as a short form for 142 Wn.2d 543. *Lewis County*, 157 Wn.2d at 497.

at 553 (quoting *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 45, 959 P.2d 1091 (1998)). Under the APA, we grant relief from an agency's adjudicative order only if it fails to meet one of nine standards delineated in RCW 34.05.570(3). "The burden of demonstrating the invalidity of [an] agency action[, here the Growth Board's decision,] is on the party asserting the invalidity" of the action, here the County. RCW 34.05.570(1)(a).

During our preliminary review of this case, we posed several questions to all the parties relating to jurisdiction and seeking a clarification of the issues on appeal. In particular, we requested citation to authority for Camas's and Ridgefield's annexation of lands while the status of these lands (dedesignation and inclusion into their UGAs) was pending review. We also requested citation to the County's and Growth Board's authority to act on issues pending review before this court that would invariably alter the status quo and impact our analysis.

To review the issues that the parties have raised in this case, we must address the timing and effective date of UGA boundary amendments, the effect of County and Growth Board actions on issues pending review before this court, and the proper standard for dedesignating ALLTCS. In part one of this opinion, we address the jurisdictional questions and hold that the Growth Board had authority to enter findings for parcels CA-1, CB, and RB-2.[6] In addition, we hold that the County had the authority to take legislative action and that the Growth Board had the authority to take agency action on issues pending before this court, but that these actions mooted issues related to parcels BC, CA-1, RB-2, and VB.

[6] The parties asserted on appeal only that the Growth Board, and by extension this court, did not have the authority to review the County's decisions on these parcels because the County no longer had jurisdiction over them.

In the second part of this opinion, we evaluate whether the Growth Board committed a legal error and whether substantial evidence supports the Growth Board's order with regard to six specific land areas: LB-1, LB-2, LE, VA, VA-2, and WB. We reject the County's argument that the Growth Board is required to review the challenged planning decisions based only on portions of the record selected by the County and is precluded from reviewing the entire record. We affirm the Growth Board's decisions with regards to parcels LB-1, LB-2, and LE. But because the Growth Board committed an error of law with regards to parcels VA, VA-2, and WB, we remand to the Growth Board for further consideration of these parcels.

## FACTS

In 2004, the County updated its GMA comprehensive plan.[7] The next year, in 2005, the County began a review of its comprehensive plan culminating in the September 25, 2007 passage of Ordinance No. 2007-09-13 (Ordinance). The Ordinance made many revisions to the County's comprehensive plan. Central to this appeal is the County's dedesignation of parcels of land from ALLTCS status and the simultaneous decision to add these lands to the UGA boundaries of the County's cities. The County dedesignated 19 land parcels, consisting of approximately 4,351 acres of land, and incorporated them into the UGAs of the Cities of Battle Ground, Camas, La Center, Ridgefield, Vancouver, and Washougal.

[7] At oral argument, the County suggested that the 2004 comprehensive plan included in the record was never finalized. Our review of previous Growth Board decisions does not support this claim. Although there previously were challenges to parts of the 2004 comprehensive plan, the Growth Board ultimately found all the challenged portions compliant with the GMA. *Bldg. Assoc. of Clark Cnty., et al., v. Clark County, et al.*, No. 04-2-0038c, 2005 WL 3392958, at *32 (W. Wash. Growth Mgmt. Hr'gs Bd., Nov. 23, 2005).

On November 16, 2007, Karpinski petitioned the Growth Board, challenging the County's dedesignation of the 19 parcels and their addition into the various UGAs.[8] In general, Karpinski argued that the County erred in its decisions because (1) the parcels still qualified as ALLTCS under the test established in *Lewis County*, (2) the County violated the GMA by improperly considering economic factors when it decided to dedesignate the parcels, and (3) the County improperly included lands not characterized by urban growth into its UGAs.

On April 8, 2008, the Growth Board held a one-day hearing to consider Karpinski's claims.[9] Although the Growth Board heard hours of testimony and reviewed an administrative record consisting of more than 3,000 pages, it focused its analysis on one specific County staff-produced document titled "Issue Paper #7 – Agricultural Lands." Administrative Record (AR) at 2236. This document contains the County's analysis of the statutory and regulatory factors for determining whether land qualifies as ALLTCS, a matrix containing information applying each of the factors to each of the 19 parcels, and maps highlighting the then current land use zoning designations of the 19 parcels.[10]

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[8] Karpinski also challenged the County's environmental review and public participation processes. The Growth Board found that these processes contained no clearly erroneous errors. Karpinski did not cross-appeal these Growth Board determinations for review to the superior court and, thus, these issues are not part of this appeal.

[9] Although the Growth Board's procedural history of this case lists the Growth Board's hearing date as April 1, 2008, the transcript of the hearing in the administrative record indicates that the hearing occurred on April 8, 2008.

[10] Our review of the entire record reveals that the matrix is an accurate summation of the County's considerations and deliberations concerning the 19 parcels. The County's staff essentially read the matrix information for each parcel over the course of several County commissioner meetings. The commissioners made comments that were later included in the last column on the matrix under the heading "[Board of County Commissioners] Deliberation/Decision." AR at 2241-47.

In late April 2008, while the Growth Board deliberated and prepared its final order on the propriety of the County's dedesignation/UGA expansion decisions for the 19 parcels, Camas and Ridgefield passed ordinances purporting to annex parts of some of the parcels then pending review before the Growth Board. By City Ordinance No. 991, Ridgefield purported to annex part of parcel RB-2. By City Ordinance No. 2512, Camas purported to annex part of parcel CA-1. And by City Ordinance No. 2511, Camas purported to annex all of parcel CB. These annexed lands were included in Karpinski's petition for review to the Growth Board but the Growth Board had no notice of the cities' legislative annexation actions.

The Growth Board entered its final order on May 14, 2008, and an amended final order on June 3, 2008.[11] The Growth Board's order affirmed the County's decisions on 8 of the challenged parcels, but it found clear error in its decisions on the other 11 challenged parcels. Accordingly, the Growth Board found the County's actions noncompliant with the GMA and invalidated the Ordinance with regard to the following 11 parcels: Battle Ground parcel BC; Camas parcels CA-1 and CB; La Center parcels LB-1, LB-2, and LE; Ridgefield parcel RB-2; Vancouver parcels VA, VA-2, and VB; and Washougal parcel WB.

On June 11, 2008, the County petitioned the Clark County Superior Court, under the APA, to review the Growth Board's decision. The County challenged only the Growth Board's

[11] The Growth Board's amended order did not substantively differ from its original order. The amended final order corrected "clerical and grammatical errors," deleted duplicative portions in the original order, and renumbered the Growth Board's findings. 2 Clerk's Papers (CP) at 263.

11 findings of noncompliance related to the County's dedesignation decisions.[12] Karpinski did not file a cross appeal.

On February 26, 2009, Karpinski and GM Camas LLC, which has interests only in parcel CA-1, stipulated that because of Camas's enactment of City Ordinance No. 2512, purporting to annex part of parcel CA-1, that GM Camas LLC prevailed on this part of Karpinski's appeal. The superior court entered the stipulation and reversed the Growth Board's decision of noncompliance for parcel CA-1.[13]

On June 12, 2009, the superior court (1) reversed the Growth Board's decision that the County improperly dedesignated from ALLTCS status parcels CB, LB-1, LB-2, LE, VA, VA-2, and WB; (2) affirmed the Growth Board's decision that the County improperly dedesignated from ALLTCS status parcels BC and VB; (3) acknowledged its previous reversal of the Growth Board's decisions with regard to parcel CA-1 based on the parties' prior stipulation; (4) found issues related to parcel RB-2 moot; and (5) remanded the case to the Growth Board for further consideration. Karpinski timely appealed. The County filed a cross appeal that it later abandoned.

After the parties appealed to this court, the Growth Board and the County continued to pass ordinances and enter orders related to lands whose legal status was pending review before

[12] Technically, La Center filed the appeal to the superior court, noting that the Growth Board reversed the County on 10 different parcels—neglecting to include parcel BC in its list—and challenging only issues related to La Center parcels. The other parties in this appeal then joined La Center's appeal, and all the parties, including Karpinski, limited their arguments to the Growth Board's noncompliance/invalidity findings of the 11 reversed parcels.

[13] The parties' stipulation and the superior court's order did not explicitly identify parcel CA-1 by name; instead, the stipulation and order referenced "the GM Camas property" and the reversal of the Growth Board "with respect to GM Camas, LLC." AR at 3277-78. In its June 12, 2009 order, the superior court identified the subject matter of the stipulation as parcel CA-1.

this court. These legislative and agency actions concerned land within parcels that were purportedly annexed (i.e., parcels CA-1, CB, and RB-2) and parcels where the superior court had affirmed the Growth Board's findings (i.e., parcels BC and VB). First, the Growth Board issued an order stating that it lacked jurisdiction over the purportedly annexed parts of parcels CA-1, CB, and RB-2, mistakenly believing that it lost jurisdiction when these lands were annexed prior to its final decision. The Growth Board refused to rescind its noncompliance findings for the purportedly annexed lands in these three parcels, but it "excused [the County] under these unique circumstances from taking legislative action to achieve compliance with the GMA" because the County now lacked authority over the purportedly annexed lands. AR at 3294. Next, the County passed an ordinance redesignating parcels BC, VB, and the portions of parcels CA-1 and RB-2 that were not purportedly annexed, as ALLTCS. Last, after the redesignation of these lands, the Growth Board entered findings of GMA compliance for parcels BC, VB, and the unannexed portions of parcels CA-1 and RB-2.

## ANALYSIS

### I.

Initially, we address two threshold matters relating to jurisdiction that affect the scope of our review. First, we must answer this question—when is a county's planning decision that is appealed to the Growth Board final such that city governments can rely and take action on it? Specifically, in this case, when, if ever, did parcels CA-1, CB, and RB-2 become incorporated into the Camas and Ridgefield UGAs such that they were subject to annexation? Second, we must evaluate what effect a county's legislative action changing the designation of land has on our jurisdiction to resolve issues in a pending appeal involving that land. We hold that because a County's challenged land designation determination is not final, city governments cannot rely on

county planning decisions that are the subject of a pending appeal and any such actions do not divest the reviewing body of jurisdiction. We also hold that in some circumstances, a County's legislative actions during a pending appeal may moot issues on review.

CITY GOVERNMENTS MAY NOT RELY ON COUNTY GMA PLANNING DECISIONS THAT ARE PENDING REVIEW

On June 1, 2010, we requested citation to the authority for Camas's and Ridgefield's annexation ordinances regarding parcel CB and parts of parcels CA-1 and RB-2. Under RCW 35.13.005, "[n]o city or town located in a county in which urban growth areas have been designated under RCW 36.70A.110 may annex territory beyond an urban growth area." Because the propriety of the County's decision to include this land in a UGA had been timely challenged and was pending review before this court, we questioned what authority allowed the cities to purportedly annex land not yet determined to be properly within their UGAs.

In a consolidated response, the parties first objected, arguing that the validity of the annexations is not properly before this court because no party raised it. But issues related to the annexations directly impact our ability to resolve pending issues on parcels CA-1, CB, and RB-2 raised in this appeal. And jurisdictional questions are, as always, a threshold issue for a reviewing court.

Because we sit in the same position as the superior court, we review issues related to all the challenged portions of the Growth Board's decision appealed to the superior court. *See Soccer Fields*, 142 Wn.2d at 553. Here, the County's original appeal challenged each of the Growth Board's decisions related to 11 different parcels, including challenges to parcels CA-1, CB, and RB-2. But in its opening brief to this court, the County argues that issues related to parcels CA-1, CB, and RB-2 are moot because the cities' annexation of the lands deprived the

Growth Board and reviewing courts of jurisdiction. Moreover, the County argues on appeal that the Growth Board committed an error of law because it entered decisions evaluating the County's actions with regard to these lands without jurisdiction to do so.[14]

From these arguments, the question pending before us with regard to parcels CA-1, CB, and RB-2 is whether the Growth Board had jurisdiction to enter findings and conclusions on these three parcels. Implicit is a question of the legitimacy of the annexations, as evidenced by arguments that any determinations made by the Growth Board or this court would be pointless because the County has no authority over annexed lands. To evaluate whether any issue on these three parcels is moot or whether the Growth Board committed an error of law, as the County contends, we must first determine what effect, if any, the annexations had on the Growth Board's jurisdiction to determine GMA compliance for parcels CA-1, CB, and RB-2.

When addressing the merits of our jurisdictional questions, the parties argue in their consolidated response that statutory authority allows city and county governments to take action on issues that are under review by the Growth Board. Specifically, the parties cite RCW

[14] Although the County's arguments do not relate to any of its assigned errors on appeal, RAP 1.2(a) permits liberal interpretation of the rules to promote justice and facilitate a decision on the merits. We exercise this discretion and consider the County's argument as an allegation that the Growth Board committed an error of law pursuant to RCW 34.05.570(3)(d) of the APA when entering noncompliance findings for parcels CA-1, CB, and RB-2. In light of the arguments contained in the administrative record that were presented to the superior court and Growth Board regarding the jurisdictional effect of the annexations, and the County's appellate arguments that issues for parcels CA-1, CB, and RB-2 are now moot, the nature of the challenge is clear in the briefing. *See Daughtry v. Jet Aeration Co.*, 91 Wn.2d 704, 709-10, 592 P.2d 631 (1979) (Reviewing the merits of a challenge on appeal, despite a failure to strictly comply with RAP 10.3, where the nature of the challenge was "perfectly clear[] and the challenged finding is set forth in the appellate brief."); *Hitchcock v. Dep't of Ret. Sys.*, 39 Wn. App. 67, 72 n.3, 692 P.2d 834 (1984) (Reviewing the merits of a challenge to a finding on appeal, despite technical violations of RAP 10.3 where the nature of the challenge was clear and the challenge to the finding extensively discussed in the appellate briefing.), *review denied*, 103 Wn.2d 1025 (1985).

36.70A.300(4), .320(1), and former RCW 36.70A.302(2) (1997) for support. RCW 36.70A.320(1) states that "comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption." RCW 36.70A.300(4) states that, "[u]nless the [Growth B]oard makes a determination of invalidity . . ., a finding of noncompliance and an order of remand shall not affect the validity of comprehensive plans and development regulations during the period of remand." The parties also cite to statutory language that a Growth Board "determination of invalidity is *prospective* in effect and does not extinguish rights that vested under state or local law before receipt of the [Growth B]oard's order by the city or county." Former RCW 36.70A.302(2) (emphasis added). The parties contend that these cited statutes allow cities to take *legislative* actions, including annexing land, in reliance on a county's decisions *until* the Growth Board determines that the county's planning decisions are noncompliant or invalid under the GMA.

The parties' arguments are unpersuasive. For the reasons we explain below, challenged County legislative actions pending review are not final and no party may act in reliance on them. In this case, the city ordinances purporting to annex land in parcels CA-1, CB, and RB-2 did not deprive the Growth Board of jurisdiction over the challenge to the County's actions. Accordingly, here the Growth Board did not err by entering findings and conclusions related to parcels CA-1, CB, and RB-2 in its final order after Camas and Ridgefield purported to annex parts of these parcels.

We review statutory construction de novo. *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 175, 4 P.3d 123 (2000). When the plain language of a statute is unambiguous, we construe the provision as written. *Bravo v. Dolsen Cos.*, 125 Wn.2d 745, 752, 888 P.2d 147 (1995). But, in undertaking a plain language analysis, we avoid a reading that

results in "unlikely, absurd, or strained consequences" because we presume that the legislature did not intend an absurd result. *Cannon v. Dep't of Licensing*, 147 Wn.2d 41, 57, 50 P.3d 627 (2002). We evaluate the plain meaning of a statutory provision from the ordinary meaning of the language used in the statute, as well as from the context of the statute in which that provision is found and the statutory scheme as a whole. *Wash. Pub. Ports Ass'n v. Dep't of Revenue*, 148 Wn.2d 637, 645, 62 P.3d 462 (2003).

The parties misinterpret RCW 36.70A.320(1). This statute addresses the burdens, presumptions, and standards that govern the *review* of a county action by the Growth Board. The purpose of the Growth Board's review is to determine the legitimacy of a county's actions that have been timely challenged. Although RCW 36.70A.320(1) creates a presumption of validity of the county's actions *that must be applied by the Growth Board during its review*, the statute does not create a presumption of validity such that other entities can act in reliance on challenged land use decisions before the Growth Board and/or appellate court terminates its review. A presumption of validity on review is just that—a rebuttable *presumption* that the County's decision is correct; but the County's timely challenged actions are not effective until review of the relevant issues is terminated.

The parties' reliance on RCW 36.70A.300(4) is also misplaced. This subsection of the statute addresses only the effect of Growth Board decisions "*during the period of remand.*" RCW 36.70A.300(4) (emphasis added). During the Growth Board's initial review of the County's decisions, nothing has been remanded to the County for its further consideration. Accordingly, this statute does not apply.

Likewise, former RCW 36.70A.302(2) does not support the parties' argument. This statute states that Growth Board decisions are prospective in effect and do not "extinguish rights

that *vested under state or local law* before receipt of the [Growth B]oard's order by the city or county." Former RCW 36.70A.302(2) (emphasis added). Here, the cities' rights to annex the lands purportedly added to their UGAs had not yet vested under state law. County decisions related to the GMA that are timely challenged and pending review before the Growth Board and/or an appellate court are not final and cannot be relied on until either (1) the Growth Board's final order is not appealed or (2) the county's decisions are affirmed and a final order or mandated opinion is filed by a court sitting in its appellate capacity.

Under the parties' interpretation of RCW 36.70A.300(4), .320(1), and former RCW 36.70A.302(2), the GMA would be unenforceable. The parties' interpretation would allow a county to incorporate any land into a UGA regardless of whether it satisfies the GMA's requirements; draw out the appeal at the Growth Board level until a city could pass an ordinance annexing the property; and then moot out any challenges by citing the county's lack of authority over the lands or argue, as it did here, that the annexation deprived the Growth Board of jurisdiction to review its decision to include the property in the UGA. The legislature did not intend to permit counties to evade review of their GMA planning decisions in this manner, and the GMA's statutory scheme does not allow them to do so.

Accordingly, we hold that Camas's and Ridgefield's annexations did not deprive the Growth Board of jurisdiction to review the validity of the County's actions dedesignating parcels CA-1, CB, and RB-2 and including them in the cities' UGAs. We address this issue only in relation to the County's challenge to the Growth Board's jurisdiction, and ours, to review its dedesignation/UGA decisions. We hold only that the Camas and Ridgefield annexation ordinances did not deprive the Growth Board or this court of jurisdiction over the appeal of parcels CA-1, CB, and RB-2 in this case. We reject the County's argument that the Growth

Board lacked authority to enter noncompliance findings related to parcels CA-1, CB, and RB-2 and that it committed an error of law when entering its findings on these parcels. Accordingly, we hold that the Growth Board had authority to enter findings regarding these parcels.[15]

Finally, in its amicus curiae brief, Camas argues that it is a necessary party to the consideration of any questions involving the validity of the annexations and that it was never properly joined to these proceedings. CR 19. A necessary party is one that "claims an interest relating to the subject of the action" and whose absence from the case may "impair or impede his ability to protect that interest." CR 19(a)(2). We are not insensitive to the cities' concerns and limit our holding only to the Growth Board's authority to enter findings regarding the validity of the County's decisions relating to these parcels.

THE IMPACT OF COUNTY ACTIONS ON ISSUES PENDING REVIEW

Also on June 1, 2010, we asked the parties to address whether the County could enact ordinances and whether the Growth Board could enter orders on matters pending appeal in this court. According to the parties' consolidated response, the County apparently decided to accept the superior court's decision affirming the Growth Board's decisions with regard to parcels BC and VB. While this case was pending review before this court, the County passed an ordinance removing parcels BC and VB from UGAs and redesignating them as ALLTCS. In the same ordinance, the County also removed from UGAs those parts of parcels CA-1 and RB-2 that were not included in the cities' annexation ordinances and redesignated them as ALLTCS.

[15] In our June 1, 2010 order relating to jurisdiction, we asked the parties about possible misrepresentations made to the superior court regarding the parcel CA-1 annexation. In light of our analysis of issues related to parcel CA-1, a discussion and resolution of any misrepresentations is unnecessary.

Although a superior court lacks authority to enter an order that modifies the judgment or decision appealed without permission from this court, RAP 7.2(e),[16] this limitation does not appear to extend to or prohibit a legislative body from taking a valid *legislative* action. Here, the County withdrew its prior efforts to incorporate parcels BC, VB, and parts of CA-1 and RB-2 into UGAs and returned these lands to their original ALLTCS designation status. Although the County's original dedesignation decisions regarding these lands were subject to our review via Karpinski's appeal from the superior court's decision, the County has the burden to prove that the Growth Board erred under the APA. RCW 34.05.570(1)(a). By the nature of its legislative action, the County effectively conceded that the Growth Board did not err in its decisions related to these lands. And because the Growth Board subsequently removed its noncompliance findings with regard to these lands, there is no longer any error presented for our review or any remedy for us to provide.[17] Accordingly, any issues related to parcels BC, VB, and the parts of parcels CA-1 and RB-2 that were redesignated ALLTCS are now moot.

[16] RAP 7.2(e) states in relevant part, "If [a] trial court determination will change a decision then being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the formal entry of the trial court decision."

[17] RCW 36.70A.330 arguably *requires* the Growth Board to review a county's progress toward achieving compliance and to enter an order removing its original findings of noncompliance despite any pending review by this court. After entering a finding of noncompliance and allowing the County time to come into compliance with the GMA, "the board *shall* set a hearing for the purpose of determining whether the state agency, county, or city is in compliance with the requirements of this chapter. . . . The board *shall* issue any order necessary to make adjustments to the compliance schedule and set additional hearings as provided in subsection (5) of this section." RCW 36.70A.330(1)-(2) (emphasis added). We note that this practice makes determining whether a Growth Board's order is final for purposes of appeal under RAP 2.1(a)(1), as opposed to discretionary review under RAP 2.1(a)(2), problematic. In addition, to the extent that the ruling appealed is no longer the final ruling (in effect), an opinion from this court could turn out to be an advisory opinion in violation of *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 416, 27 P.3d 1149 (2001), *cert. denied*, 535 U.S. 931 (2002), and *Commonwealth Ins. Co. of Am.*

PROPRIETY OF APPELLATE REVIEW OF THE COUNTY'S GMA DECISIONS AFFIRMED BY THE GROWTH BOARD BUT NOT APPEALED

In our June 1, 2010 order relating to jurisdiction, we also asked the parties to clarify whether the notice of appeal included the propriety of the Growth Board's decision approving the County's dedesignation of eight parcels (i.e., parcels BB, LA, LC, RB-1, RC, VC, VE, and WA) from ALLTCS status. The Growth Board ruled that the County's decisions on these eight parcels were compliant with the GMA and Karpinski did not cross-appeal these decisions to the superior court. Although the Growth Board addressed all 19 parcels in a single decision, the parties agree that the notice of appeal did not include any issues related to the Growth Board's decisions affirming the eight aforementioned parcels. Accordingly, we do not address any issues related to parcels BB, LA, LC, RB-1, RC, VC, VE, and WA.

II.

We next address the land specific arguments related to parcels LB-1, LB-2, LE, VA, VA-2, and WB. The Growth Board determined that the County's decisions dedesignating these parcels from ALLTCS status and incorporating them into UGAs were noncompliant with the GMA. We affirm the Growth Board's decisions for parcels LB-1, LB-2, and LE, but remand to the Growth Board for further consideration on parcels VA, VA-2, and WB.

STANDARD OF REVIEW AND BURDEN OF PROOF IN GMA CASES

The GMA provides counties with broad discretion to develop comprehensive plans. *Soccer Fields*, 142 Wn.2d at 561. A county's discretion, however, "is bounded . . . by the goals and requirements of the GMA." *Soccer Fields*, 142 Wn.2d at 561. The GMA's goals include

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*v. Grays Harbor County*, 120 Wn. App. 232, 245, 84 P.3d 304 (2004) (citing *Wash. Beauty Coll., Inc. v. Huse*, 195 Wash. 160, 164, 80 P.2d 403 (1938)).

encouraging development in areas already characterized by urban development; reducing sprawl; encouraging economic development; maintaining and enhancing natural resource-based industries, such as the agricultural industry; conserving agricultural lands; and retaining open spaces including increasing access to natural resource lands. RCW 36.70A.020(1), (2), (5), (8), (9).

The Growth Board is charged with determining whether county decisions comply with GMA requirements. Former RCW 36.70A.280 (2003); RCW 36.70A.320(3); *Lewis County*, 157 Wn.2d at 497. In carrying out its duties, the Growth Board can either (1) remand noncompliant decisions and ordinances to the county so it can bring them into compliance with the GMA or (2) invalidate part or all of the county's noncompliant comprehensive plan and/or development regulations. RCW 36.70A.300(3); former RCW 36.70A.302(1) (1997); *Lewis County*, 157 Wn.2d at 498 n.7.

The legislature specifically intended the Growth Board "'to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of' the GMA." *Lewis County*, 157 Wn.2d at 498 (quoting former RCW 36.70A.3201 (1997)). Accordingly, at the Growth Board's level of review, a county's comprehensive plan and/or regulations are "presumed valid upon adoption." RCW 36.70A.320(1). This statutory deference requires that the Growth Board "'shall find compliance' unless it determines that a county action 'is clearly erroneous in view of the entire record before the [Growth B]oard and in light of the [GMA's] goals and requirements.'" *Lewis County*, 157 Wn.2d at 497 (quoting RCW 36.70A.320(3)); *see also* RCW 36.70A.320(2) (stating that a challenger has the burden to demonstrate that a county's action is not GMA-compliant). A county's action is "clearly erroneous" if the Growth Board has a "firm and definite conviction that a mistake has been committed." *Thurston County v. W.*

*Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329, 340-41, 189 P.3d 38 (2008) (internal quotation marks omitted) (quoting *Lewis County*, 157 Wn.2d at 497).

The APA governs judicial review of board actions, including the Growth Boards'. *Thurston County*, 164 Wn.2d at 341; *see also* RCW 36.70A.300(5). "The burden of demonstrating the invalidity of [an] *agency action* is on the party asserting invalidity," here the County and the other interveners. RCW 34.05.570(1)(a) (emphasis added); *Thurston County*, 164 Wn.2d at 341. On appeal, we sit in the same position as the superior court and apply the APA review standards directly to the record before the agency. *Soccer Fields*, 142 Wn.2d at 553 (quoting *Redmond*, 136 Wn.2d at 45). In addition, like the Growth Board, we defer to the county's planning action unless the action is "clearly erroneous." *Brinnon Grp. v. Jefferson County*, 159 Wn. App. 446, 465, 245 P.3d 789 (2011); *see* RCW 36.70A.320(3); former RCW 36.70A.3201; *Quadrant Corp. v. Cent. Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 238, 110 P.3d 1132 (2005).

Under the APA, we grant relief from an agency's order after an adjudicative proceeding if we determine, in relevant part, that

> (d) [t]he agency has erroneously interpreted or applied the law; [or]
> (e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter.

RCW 34.05.570(3).[18]

[18] On appeal, no party clearly identifies the portions of the APA that they rely on in their assignments of error. But RAP 1.2(a) permits liberal interpretation of the rules and allows appellate review despite technical violations where proper assignment of error is lacking but the nature of the challenge is clear and the challenged findings are set forth in the party's brief. *Green River Cmty. Coll. Dist. 10 v. Higher Ed. Pers. Bd.*, 107 Wn.2d 427, 431, 730 P.2d 653 (1986). Here, it is quite clear from the briefing that the two issues on appeal are whether the

We review a Growth Board's "legal conclusions de novo, giving substantial weight to its interpretation of the statutes it administers" and its "findings of facts for substantial evidence." *Manke Lumber Co. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 113 Wn. App. 615, 622, 53 P.3d 1011 (2002), *review denied*, 148 Wn.2d 1017 (2003); *see also Swinomish Indian Tribal Cmty. v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn.2d 415, 424, 166 P.3d 1198 (2007); *Lewis County*, 157 Wn.2d at 498. Substantial evidence is "'a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.'" *Soccer Fields*, 142 Wn.2d 553 (quoting *Callecod v. Wash. State Patrol*, 84 Wn. App. 663, 673, 929 P.2d 510, *review denied*, 132 Wn.2d 1004 (1997)).

THE GMA DEFINITION AND HISTORY OF THE TERM "AGRICULTURAL LANDS OF LONG-TERM COMMERCIAL SIGNIFICANCE" (ALLTCS)

By September 1, 1991, certain counties were required to designate "'[a]gricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products.'" *Lewis County*, 157 Wn.2d at 498-99 (quoting RCW 36.70A.170(1)(a)). Additionally, counties were mandated to develop regulations "'to assure the conservation of'" designated agricultural lands. *Lewis County*, 157 Wn.2d at 499 (quoting RCW 36.70A.060(1)(a)). The purpose was clear: to curtail sprawl, to preserve critical resource lands, and to ensure the continued viability of local food production.

Our Supreme Court summarized the working definition of "agricultural land" under the GMA as

> land: (a) not already characterized by urban growth (b) that is primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A.030(2), including land in areas used or capable of being used for

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Growth Board correctly interpreted and applied the GMA and whether substantial evidence supports various parts of the Growth Board's final decision and order.

> production based on land characteristics, *and* (c) that has long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses. We further hold that counties may consider the development-related factors enumerated in [former] WAC 365-190-050(1) [(1991)] in determining which lands have long-term commercial significance.

*Lewis County*, 157 Wn.2d at 502.[19]

Despite our Supreme Court's permissive language suggesting that counties "*may* consider the development-related factors enumerated in [former] WAC 365-190-050(1)," *Lewis County*, 157 Wn.2d at 502 (emphasis added), when addressing the third prong of the *Lewis County* test to determine if land has long-term significance for agricultural production, the regulation actually *requires* counties to consider the 10 factors:

> (1) In classifying agricultural lands of long-term significance for the production of food or other agricultural products, counties and cities *shall* use the land-capability classification system of the United States Department of Agriculture [(USDA)] Soil Conservation Service as defined in Agriculture Handbook No. 210. These eight classes are incorporated by the [USDA] into map units

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[19] Our Supreme Court evaluated two statutes when developing the *Lewis County* definition of "agricultural land":

> RCW 36.70A.030(2), which reads:
> "Agricultural land" means land *primarily devoted to the commercial production* of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and *that has long-term commercial significance for agricultural production.*

(emphasis added) and

> RCW 36.70A.030(10), which reads:
> "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

As evidenced by this case, since *Lewis County* some counties and the Growth Board have used the term ALLTCS to describe lands rather than using the term "agricultural lands." Because long-term commercial significance is part of the working definition of "agricultural lands," "agricultural lands" and ALLTCS are synonymous terms.

> described in published soil surveys. These categories incorporate consideration of the growing capacity, productivity and soil composition of the land. Counties and cities *shall* also consider the combined effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:
>
> (a) The availability of public facilities;
> (b) Tax status;
> (c) The availability of public services;
> (d) Relationship or proximity to urban growth areas;
> (e) Predominant parcel size;
> (f) Land use settlement patterns and their compatibility with agricultural practices;
> (g) Intensity of nearby land uses;
> (h) History of land development permits issued nearby;
> (i) Land values under alternative uses; and
> (j) Proximity of markets.

Former WAC 365-190-050 (emphasis added).[20] The GMA and WAC do not prioritize these 10 factors and a county has discretion regarding their application. *Lewis County*, 157 Wn.2d at 502 n.11. Additionally, our Supreme Court has suggested that counties cannot consider additional other factors to the detriment of the GMA's stated goals and requirements. *See Lewis County*, 157 Wn.2d at 506 n.16 ("[A]lthough . . . . counties may consider factors besides those specifically enumerated in RCW 36.70A.030(10) in evaluating whether agricultural land has long-term commercial significance, that is not what happened here. Rather, Lewis County simply decided to serve its own goal . . . instead of meeting the GMA's specific land designation requirements.").

The Growth Board previously gave deference to the County's 2004 designation of these lands as ALLTCS. *See Bldg. Assoc. of Clark Cnty.*, No. 04-2-0038c, 2005 WL 3392958. We evaluate whether a dedesignation of agricultural land was clearly erroneous by determining whether the property in question continues to meet the GMA definition of "agricultural land" as

[20] Moreover, in this instance, the County incorporated the WAC factors in its comprehensive plan as the approach used to analyze whether lands qualify as ALLTCS.

defined in *Lewis County*.[21] *See Yakima County v. E. Wash. Growth Mgmt. Hearings Bd.*, 146 Wn. App. 679, 688-89, 192 P.3d 12 (2008). The County's contention that the Growth Board is required to give its 2007 dedesignation deference over its 2004 designation is unpersuasive. The County designated these parcels as ALLTCS in its 2004 comprehensive plan that it intended to follow for 20 years. Absent a showing that this designation was both erroneous in 2004 and improperly confirmed by the Growth Board, or that a substantial change in the land occurred since the ALLTCS designation, the prior designation should remain. Without such deference to the original designation, there is no land use plan, merely a series of quixotic regulations. Moreover, under such ever-changing regulations, the GMA goal of planning, maintaining, and conserving agricultural lands could never be achieved. *See* RCW 36.70A.020(8); *Soccer Fields*, 142 Wn.2d at 558.

THE GROWTH BOARD'S REQUIRED DEFERENCE TO THE COUNTY

As another preliminary matter, the County argues that the Growth Board committed an error of law by failing to defer to the County's current land characterizations to the derogation of its prior long-term land designations. Specifically, the County asserts that the Growth Board substituted its own judgment based on its improper independent evaluation of the evidence rather

[21] We note that even though a county's comprehensive plan amendments are presumed valid upon adoption, under RCW 36.70A.320(1), a county's previous determinations and designations of land are still relevant to the analysis. A significant goal of the GMA is to identify, *maintain*, enhance, *and conserve* agricultural lands. *See* RCW 36.70A.020(8); *Soccer Fields*, 142 Wn.2d at 558. This goal suggests there is relevance of a county's previous designation of land as ALLTCS because otherwise there would be no way for a county to maintain and conserve these lands over time. But under the GMA it is unclear, and the legislature may want to consider and provide direction on, what weight a county should give to prior agricultural designations during subsequent comprehensive plan reviews. Based on the goals of maintaining and conserving agricultural lands, it appears the proper weight is deference to the original designation. *See* RCW 36.70A.020(8); *Soccer Fields*, 142 Wn.2d at 558; *see Yakima County v. E. Wash. Growth Mgmt. Hearings Bd.*, 146 Wn. App. 679, 688-89, 192 P.3d 12 (2008).

than deferring to the County's decisions, as required by RCW 36.70A.320(1) and former RCW 36.70A.3201. The County contends that the Growth Board exceeded its authority by reevaluating all the evidence in the record to determine whether the County committed a clear error. We disagree.

The Growth Board's function is to determine whether the County complied with the GMA. Former RCW 36.70A.280; RCW 36.70A.320(3); *Lewis County*, 157 Wn.2d at 497. In order to determine compliance, the Growth Board must review the County's actions and decide whether they are "clearly erroneous *in view of the entire record before the board and in light of the goals and requirements*" of the GMA. RCW 36.70A.320(3) (emphasis added). The County has not persuaded us that the Growth Board committed an error of law by exceeding its authority in its review of the County's dedesignation decisions. RCW 34.05.570(1)(a).

In order for the Growth Board to review Karpinski's challenge to the County's dedesignation decisions, it had to review all of the evidence in the record, review the statutory and regulatory factors in the *Lewis County* test, and determine whether the County erred in 2007 when applying the test to the parcels. To fulfill its statutory obligation of determining whether a county committed clear error, a Growth Board must *review* the evidence but not *reweigh* it. Once the Growth Board determines that the County committed a clear error, it owes no deference to the County's decisions, which rests on the identified error, and acts in accord with its statutory duty when entering findings of noncompliance and/or invalidity. RCW 36.70A.300, .302, 320(3). Accordingly, insofar as the County argues that the Growth Board committed a legal error by reviewing all the evidence rather than just the portion of the record that the County put forth as supporting its decisions, the County's claim fails.

Moreover, the County's argument that the Growth Board is compelled to consider only the portion of the evidentiary record highlighted by the County and is precluded from considering the entire evidentiary record is inconsistent with the concept of appellate review. If the Growth Board were required to automatically accept a county's land characterization without the context of the entire record, there is, in effect, no full review of the county's decisions. When engaging in a statutory construction analysis, we avoid a construction that results in "unlikely, absurd, or strained consequences" because we presume that the legislative body did not intend absurd results. *Cannon*, 147 Wn.2d at 57. Under the County's argument, the Growth Board can consider only a county's final decisions and/or evidence that a county puts forward as supporting its decision, *and* the Growth Board must reject any contradictory evidence and/or not examine the reasons underlying a county's decisions. But the Growth Board has both the duty and the authority to review a county's reasons supporting its decisions to determine if whether a county followed the GMA and whether a county's decisions are consistent with the GMA's goals and objectives. *See* RCW 36.70A.320(3). Otherwise a county could simply ignore overwhelming evidence that contradicts its preferred planning option and articulate a decision that, on its face, appears consistent with the GMA but lacks evidentiary support.

In addition, the County's argument would render meaningless the plain language of the Growth Board's mandate to determine GMA compliance "*in view of the entire record before the board.*" RCW 36.70A.320(3) (emphasis added). We interpret and construe statutes so as to give effect to all statutory language and not render any part meaningless or superfluous. *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996). Under the County's interpretation, a county would have unfettered discretion and authority to make planning decisions that facially comply with the GMA but are based on policies inconsistent with the

GMA. The County's interpretation is inconsistent with a proper application of the rules of statutory construction and would effectively eviscerate the duties the legislature requires the Growth Board to perform.

In addition, the County's argument misstates the Growth Board's standard of review by conflating it with the appellate court's standard of review. The County asserts that if substantial evidence supports its decisions, the Growth Board *must* find that the County complied with the GMA. Resp't MacDonald Living Trust Br. at 7 (stating, "[T]he Growth Board was required to find the County's action in compliance **unless** the Growth Board *found substantial evidence in the record* that the County's action was clearly erroneous in view of the entire record.") (emphasis added). But a Board's finding of clear error is not grounded in whether substantial evidence supports the County's decisions; the correct standard is whether, after having reviewed the entire record in light of the goals and purposes of the GMA, the Growth Board has a "'firm and definite conviction that a mistake has been committed.'" *Soccer Fields*, 142 Wn.2d at 552 (quoting *Dep't of Ecology v. Pub. Util. Dist. No. 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993), *aff'd*, 511 U.S. 700, 114 S. Ct. 1900, 128 L. Ed.2d 716 (1994)). The Growth Board could find both that substantial evidence supports the County's decisions *and* that the County's decisions contradict the goals and purposes of the GMA such that the Growth Board has a firm and definite conviction that the County made a mistake.

Accordingly, the County's claim that the Growth Board committed an error of law when it did not defer to the County's 2007 decisions—which were inconsistent with the County's 2004 decisions to which the Growth Board had previously deferred—rests on a misinterpretation of statutes. The GMA does not preclude the Growth Board from reviewing the entire record when making a determination of GMA compliance. And the correct standard for the Growth Board to

apply is whether it has a firm and definite conviction that the County made a mistake. We turn now to a review of the individual parcels and whether the Growth Board committed an error of law when finding the County made clear errors in its planning decisions.

LA CENTER PARCELS LB-1, LB-2, LE[22]

Next, we address the County's argument that the Growth Board erred in finding that parcels LB-1, LB-2, and LE did not comply with the GMA because the Growth Board (1) failed to consider evidence supporting La Center's position and (2) failed to enter findings of fact that showed it considered fully all the *Lewis County* factors. Our review of the record shows that the Growth Board considered all the *Lewis County* factors and correctly determined that the County committed a clear error in deciding to dedesignate these lands. The County ignored overwhelming evidence showing that these parcels were ALLTCS in 2004 and remained so in 2007. Substantial evidence supports each part of the Growth Board's application of the *Lewis County* analysis, as well as the ultimate GMA noncompliance finding. The Growth Board properly determined that the County erred in 2007 when it dedesignated parcels LB-1, LB-2, and LE from ALLTCS status and incorporated them into the La Center UGA.

First, we reiterate that the County designated La Center parcels LB-1, LB-2, and LE as ALLTCS in 2004. The record supports the Growth Board's determination that ALLTCS remained the correct designation for the property in 2007. The challenged La Center parcels meet the definition of ALLTCS based on the County's own *Lewis County* matrix information. The evidence that the County considered in its matrix overwhelmingly indicates that these parcels remain ALLTCS and that, in dedesignating them, the County incorrectly ignored the vast

[22] In this section of the opinion, we attribute to the County all arguments presented by La Center and the County for ease to the reader.

majority of the evidence in favor of its desire to further economic development for the City of La Center.

Specifically, the matrix indicates that parcels LB-1, LB-2, and LE all (1) lack water and sewer lines in their borders; (2) are not adjacent to the then existing boundary of the La Center UGA;[23] (3) are described as having mostly rural land uses such as open fields, forested land, and rural residential; (4) are next to land characterized by rural land uses; and (5) lack any urban development permits in their vicinity. In addition, parcel LB-1 is described as containing 56.58 percent prime agriculture soils with 83.79 percent of the parcel's land currently in an agricultural/farm use program. Parcels LB-2 and LE have 80 percent and 78.69 percent prime agricultural soils, respectively, although these parcels currently have only 12 percent and 0 percent of the land currently in an agricultural/farm use program. Based on the overwhelming evidence that these parcels are still ALLTCS, the Growth Board correctly identified that the County committed clear error when dedesignating parcels LB-1, LB-2, and LE from ALLTCS status.

Because the *Lewis County* test has three prongs that must be satisfied for land to be dedesignated as ALLTCS, we briefly evaluate each in reviewing whether the Growth Board correctly concluded that the County erred when it dedesignated these parcels. *Yakima County*, 146 Wn. App. at 688-89. Put differently, just because the County may have committed clear error in its application of one prong of the test does not mean that the County's overall dedesignation decision for a particular parcel was clear error because the County may have correctly determined that the land failed a different prong of the test.

[23] Although the matrix indicates that parcel LB-1's eastern boundary was adjacent to the then existing La Center UGA, a map of the parcel attached to the matrix belies this characterization.

The first *Lewis County* prong requires a determination of whether the land is characterized by "urban growth." 157 Wn.2d at 502. The Growth Board's finding of fact 43 states in part, "Areas LB-1, LB-2, and LE while near the La Center's UGA are not areas of the UGA characterized by urban growth." 2 CP at 339. The County concedes that it has never challenged this finding of fact.[24] Unchallenged findings are verities on appeal. *Manke*, 113 Wn. App. at 628.

Moreover, even if we were to review it, substantial evidence supports finding of fact 43. The GMA defines "urban growth" as "typically requir[ing] urban governmental services." Former RCW 36.70A.030(18) (2005). "Urban governmental services" include a variety of "public services and public facilities." Former RCW 36.70A.030(20) (2005) (listing examples of "urban governmental services," including storm and sanitary sewers, water, street cleaning, fire and police protection, public transit, and other public utilities). The GMA also defines "[c]haracterized by urban growth" as "land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth." Former RCW 36.70A.030(18).

All the evidence in the County's matrix belies a conclusion that parcels LB-1, LB-2, and LE are characterized by urban growth. The second column of the County's matrix, which addresses the first *Lewis County* test prong, notes only the size of the parcel and that there are no sewer or water lines in the parcels. And, elsewhere in the matrix, the County describes each of

[24] La Center indicated in a supplemental brief that it did not challenge finding of fact 46 in its appeal to the superior court or to this court. When the Growth Board filed its amended final decision deleting duplicative portions, the numbering of its factual findings changed. Finding of fact 46 in the May 14, 2008 final order became finding of fact 43 in the amended June 3, 2008 final order.

these parcels as containing mostly "open fields, forested land, and rural residential" land uses, that there are no urban development permits within the vicinity of these parcels, and that the parcels are not adjacent to any existing UGAs. AR at 2242-43. Accordingly, substantial evidence supports a finding that parcels LB-1, LB-2, and LE do not contain urban growth and are not near lands containing urban growth.[25] The Growth Board correctly concluded that the County committed clear error when assessing the urban growth characteristics of these parcels because the evidence does not support it.

The second *Lewis County* prong requires a determination of the commercial productivity of the land or the land's capability of being commercially productive. 157 Wn.2d at 502. This factor requires an assessment of whether "the land is actually used or capable of being used for agricultural production." *Redmond*, 136 Wn.2d at 53. Further, "neither current use nor landowner intent of a particular parcel is conclusive for purposes of this element." *Redmond*, 136 Wn.2d at 53. The Growth Board's finding of fact 43 states in part, "All areas[, LB-1, LB-2, and LE,] are capable of being farmed." 2 CP at 339. The County did not challenge finding of fact 43 and, therefore, it is a verity on appeal. *Manke*, 113 Wn. App. at 628. Moreover, on appeal, the County concedes that "there is substantial evidence in the record that these areas have soils suitable for agriculture." Resp't La Center Br. at 4. Accordingly, substantial evidence supports that parcels LB-1, LB-2, and LE are lands that are able to be farmed. The Growth

[25] In its briefing, La Center argues that these parcels are characterized by urban growth because water is located two miles away and La Center's waste management plant has confirmed it has the capacity to serve these parcels. La Center provides no citations to the record to support this factual assertion. Though the County discussed sewer capacity during its preliminary discussions about the La Center parcels, the discussions appear to reference information contained outside the record. But because La Center did not challenge finding of fact 43, it is a verity and arguments about evidence conflicting with this finding are irrelevant.

Board correctly concluded that the County committed clear error when it evaluated the farming capabilities of these parcels.[26]

The final *Lewis County* prong requires a determination of the "long-term commercial significance" for agricultural production of the parcels. 157 Wn.2d at 502. This prong requires considering soil composition, proximity to population areas, the possibility of more intense uses of the land, and the 10 factors in former WAC 365-190-050(1). *See* RCW 36.70A.030(2), (10); *Lewis County*, 157 Wn.2d at 502. This is the main prong that the County challenges, alleging that the Growth Board did not adequately consider all the factors in light of minimal findings of fact entered related to this prong.

Although the County is correct that the Growth Board did not enter specific findings of fact related to each of the WAC factors, the record shows that the Growth Board adequately considered all aspects of the third *Lewis County* test prong. In its final decision, the Growth Board outlined the various arguments the parties presented regarding the WAC factors, evidencing that the Growth Board did not overlook disputes about any of them. In the analysis section of its final order, the Growth Board mentioned "other WAC factors" but stated that "[t]he [County]'s reason for de-designating these areas is that they border [Interstate-5 (I-5)] therefore present[ing] a unique economic development opportunity for La Center. . . . The [County]'s desire to further economic development can not outweigh its duty to designate and conserve agricultural lands." 2 CP at 328. The County's clearly stated reasons for dedesignating these

[26] It appears that the County relied on an individual County commissioner's belief in the difficulties in obtaining water rights or accessing water for farming on these parcels. We could not find anything in the record to support the commissioner's opinion that it would be hard to get water and/or water rights to these parcels. The County commissioner merely states this belief, which in and of itself does not constitute substantial evidence supporting the County's decision.

parcels were beliefs that (1) the parcels had a "special value" (AR at 24080) that provided more economic benefit to La Center as developed land than it would as agricultural land and (2) the lands would help "diversify the La Center economy." AR at 15.[27]

Although neither the GMA nor WAC prioritize the WAC factors, the Growth Board correctly determined that the County committed clear error because it focused almost exclusively on diversifying La Center's economy and other economic considerations while ignoring the other WAC factors and local agricultural needs. Our Supreme Court previously suggested that economic considerations cannot be outcome determinative because "[p]resumably, in the case of agricultural land, it will always be financially more lucrative to develop such land for uses more intense than agriculture." *Redmond*, 136 Wn.2d at 52.

Moreover, the County's overtly heavy reliance on economic factors when deciding whether land has long-term agricultural commercial significance runs afoul of several of the GMA's planning goals—namely, the County's duty to "designate and conserve agricultural lands." *Soccer Fields*, 142 Wn.2d at 558 (analyzing the GMA's "Natural resource industries" planning goal—RCW 36.70A.020(8)). In addition, the County's emphasis on economic factors violates RCW 36.70A.020(5), which requires counties to "[e]ncourage economic development . . . *within the capacities of the state's natural resources*, public services, and public facilities." (Emphasis added.) The Growth Board correctly concluded that the County committed clear error in its analysis of the *Lewis County* test's third prong when the County appeared to overtly ignore the goals of the GMA by focusing on economic factors.

[27] Also, La Center's mayor stated in a letter to the County commissioners, "[T]he City's objective in the current UGA expansion has been to urbanize the I-5 Junction as part of the City's incorporated area in an effort to diversify the City's economic base." AR at 1817.

In addition, we note that the economic factors on which the County relied when making its decisions were speculative in nature. At the time, part of parcel LB-2 was subject to a pending request for federal trust holding status by the recently federally-recognized Cowlitz Indian Tribe. The County believed that the land would be taken into trust and that the tribe would then build a casino on the land, which in turn would destroy the agricultural nature of the surrounding land. The County believed that because the land would soon be developed by the tribe anyway, development should be allowed on other agricultural lands in and around parcel LB-2 and the I-5 area. At the time of the County's decision, the *possible* approval of the pending trust application and the *possible* building of a casino were too attenuated to support the County's position. Allowing the County to begin developing the land in 2007 based on the Cowlitz Tribe's speculative development plans, which could take years to overcome multiple legal hurdles, could have resulted in the inappropriate conversion of agricultural land pursuant to the GMA if the Cowlitz Tribe's speculative development plans fell through. Perhaps in the future, the circumstances of the land will have changed such that the land in and around parcel LB-2 no longer qualifies as ALLTCS under the *Lewis County* test. But when the County made its decision under the then existing circumstances as we understand them, and in light of the deference to the 2004 ALLTCS land designations, the parcels continued to meet the requirements of the *Lewis County* test.[28]

[28] On January 12, 2011, La Center filed a motion requesting that we take judicial notice of the United States Department of the Interior's December 2010 decision to approve the Cowlitz Tribe's fee-to-trust application of approximately 152 of the 245 acres in parcel LB-2. The Department of Interior's approval allows the tribe to establish a reservation and indicates the land is *eligible* for gaming under the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721. But that La Center and the County three years ago accurately predicted the approval of the trust application does not change our analysis. We, and the Growth Board, must consider the evidence and circumstances of the land at the time of the County's decision to determine whether

Moreover, to the extent that the County believes that the "only logical place" for economic growth of the city is an expansion of the UGA to the I-5 corridor, their belief lacks support in the law. AR at 2370. Under the GMA, the "logical place" for expansion and growth is to build higher within the UGA, not to expand it. *See* RCW 36.70A.020(2) (stating that a goal of the GMA is to "[r]educe the inappropriate conversion of undeveloped land into sprawling, low-density development") (emphasis omitted).

We also reject the County's position that the Growth Board erred by focusing on the La Center parcels' soil type and relationship to the existing La Center UGA. The Growth Board's decision cited a variety of reasons supporting its finding that the County committed clear error. Of particular noteworthiness, the Growth Board emphasized a lack of urban growth on the parcels themselves as well as the surrounding lands. Only part of the Growth Board's analysis included soil characteristics and proximity to the existing La Center UGA.

In addition, the case law the County relies on does not support its assertion that the Growth Board incorrectly determined that these parcels are not adjacent to areas characterized by urban growth. The County, citing *City of Arlington v. Central Puget Sound Growth Management Hearings Board*, 164 Wn.2d 768, 193 P.3d 1077 (2008), argues that because the

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the County complied with the GMA when making its land use decisions. Otherwise, the County might have improperly developed the land should its speculative predications have failed to come to fruition. Moreover, even though the Cowlitz Tribe's federal trust request has now been approved, the *possible* building of a casino is still too attenuated to support the County's 2007 dedesignation decision. Among other practical considerations, financing to build the infrastructure of the reservation, let alone the intended casino, is unknown. And the effects of the recent economic recession may very well bring about delay or abandonment of some or all of the tribe's development plans, even plans that are desirable and were created with good faith intentions to complete. The possibility of building a casino and the impact on the surrounding agricultural productivity of the land was too speculative in 2007 to support the County's decisions, and it remains speculative even under the present circumstances. And even if the sewer and projected infrastructure materializes, they might serve only the tribal trust lands.

parcels are adjacent to the I-5 highway, they are adjacent to areas characterized by urban growth. But in *Arlington*, our Supreme Court held that an area called "Island Crossing" could be incorporated into a UGA for two separate reasons: (1) The land's proximity to an I-5 interchange allowed the land to be properly considered as proximate to urban growth, *and* (2) the Island Crossing land had an adjacent border to the existing Arlington UGA. 164 Wn.2d at 790-91 (emphasis added). Here, the parcels have no adjacent borders with the former La Center UGA boundary and, although they are near I-5, the parcels themselves and surrounding lands completely lack any urban growth. The *Arlington* test is not satisfied by mere proximity to the I-5 corridor and does not support the County's claim.

Accordingly, having correctly concluded that the County committed clear error in its analysis of the *Lewis County* test, the Growth Board did not commit an error of law by failing to defer to the County's dedesignation decisions for parcels LB-1, LB-2, and LE. In addition, based on its review of the totality of all the evidence before it, substantial evidence supports the Growth Board's conclusion that parcels LB-1, LB-2, and LE meet all three prongs of the *Lewis County* test and are ALLTCS. We discern no error and affirm the Growth Board's decision that the evidence does not support the County's dedesignation of parcels LB-1, LB-2, and LE from their ALLTCS status.

VANCOUVER PARCELS VA AND VA-2[29]

The County argues that the Growth Board erred when entering finding of fact 32, stating that parcels VA and VA-2 are "near the UGA but are not near areas characterized by urban

[29] In this section, we attribute all arguments presented by Renaissance Homes, which has interest in the VA parcel, and the County to the County for ease to the reader. Also, the parties acknowledge a scrivener's error in the administrative record on the Vancouver West Map attached to the County's matrix where parcel "VA-1" should be labeled "VA-2."

growth or adjacent to areas characterized by urban growth." 2 CP at 337. In effect, the County argues that the Growth Board erred when reviewing the County's assessment of the first *Lewis County* prong. We agree and remand to the Growth Board for reconsideration of its decision on parcels VA and VA-2.

The GMA defines "[c]haracterized by urban growth" as referring to "land having urban growth located on it, *or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.*" Former RCW 36.70A.030(18) (emphasis added). "Urban growth" is defined in part as "growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber" and that "[w]hen allowed to spread over wide areas, urban growth typically requires urban governmental services." Former RCW 36.70A.030(18). "Urban governmental services" are "public services and public facilities . . . including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas." Former RCW 36.70A.030(20).

Under the first prong of the *Lewis County* test, the statutory definition of "urban growth" requires an assessment of the overall context of the land's relationship to the surrounding land—not just an evaluation of the land itself. *See* former RCW 36.70A.030(18); *Lewis County*, 157 Wn.2d at 502. Parcels VA and VA-2 lie within a small area of land that is quickly being encroached on by two separate UGAs—the Vancouver UGA and the Battleground UGA. These parcels' relative proximity to all the development occurring in both UGAs, but particularly the Vancouver UGA, belies the Growth Board's conclusion that the VA and VA-2 parcels are not

characterized by urban growth. It appears that the Growth Board's determination that the County committed clear error in the dedesignation of these parcels was based on an error in the Growth Board's application of the statutory definition of "characterized by urban growth" in the first *Lewis County* prong. Accordingly, we remand to the Growth Board its decisions regarding parcels VA and VA-2 for further consideration.[30]

WASHOUGAL PARCEL WB[31]

For parcel WB, the County argues that substantial evidence does not support part of finding of fact 40 and that the Growth Board failed to properly apply the *Lewis County* test by not considering all the WAC factors. Substantial evidence supports the challenged portion of finding of fact 40. But the record does not show that the Growth Board considered all of the WAC factors. Accordingly, we remand to the Growth Board its decision on parcel WB for further consideration.

The County assigns error to finding of fact 40 insomuch as the Growth Board stated, "[Area WB] . . . is not adjacent to the UGA." 2 CP at 338. The County asserts that the matrix indicates that the WB parcel's "SW tip [is] adjacent to [a] UGA" rather than stating that parcel WB is *not* adjacent to the Washougal UGA. Resp't MacDonald Living Trust Suppl. Br. at 3. The County's matrix does not contain the asserted language and actually states that parcel WB is "[n]ot adjacent to [the] Washougal UGA." AR at 2247. Moreover, a review of the Washougal

[30] Because we remand on these grounds, we need not consider other arguments such as a challenge to finding of fact 33 regarding the adequacy of the Growth Board's evaluation of the WAC factors for the VA and VA-2 parcels.

[31] In this section, we attribute to the County all arguments presented by MacDonald Living Trust and the County for ease to the reader. We note that the record is not clear whether MacDonald owns all of or only a portion of parcel WB.

UGA map attached to the County's matrix reveals that parcel WB does not touch the former Washougal UGA boundary. Accordingly, substantial evidence supports the Growth Board's finding that parcel WB is not adjacent to the Washougal UGA.

Next, we review the third prong of the *Lewis County* test, the only prong that the County assigned error to, to determine whether the Growth Board adequately reviewed all the statutory and regulatory factors when making its noncompliance finding. Our review of the Growth Board's analysis of the WB parcel reveals that the Growth Board failed to make an adequate record of its consideration of most of the WAC factors. The Growth Board's analysis and finding of fact 40, the only formal finding specific to parcel WB, discusses soil characteristics, tax base expansion benefits, and adjacency of the parcel to the existing UGA. But the record does not show that the Growth Board considered all the WAC factors in its review such that it could have had a "firm and definite conviction" that the County made a mistake in its dedesignation decision insofar as the County made its decision based on the third *Lewis County* test prong. *Soccer Fields*, 142 Wn.2d at 552. Accordingly, we remand the Growth Board's decision for parcel WB to the Growth Board for further consideration.[32]

CONCLUSION

Our opinion resolves the issues in this case with three major holdings in addition to our evaluation of the parcel-specific analysis of the Growth Board's actions. First, county GMA planning decisions are not final when they have been appealed and have an unresolved legal status. Second, although a county's legislative body and the Growth Board can take actions that affect issues currently pending for review in this court, its actions may moot issues pending

[32] Because of the basis for our remand, we need not address arguments that parcel WB should be dedesignated and incorporated into the Washougal UGA to ensure that enough land is available for development to accommodate expected population growth.

review. And, third, we affirm the Growth Board's ability to review challenged county GMA planning decisions in light of all the evidence in the record. In accordance with this opinion, we remand to the Growth Board for further consideration on parcels VA, VA-2, and WB while affirming the Growth Board in all other challenged aspects.

QUINN-BRINTNALL, J.

We concur:

ARMSTRONG, P.J.

HUNT, J.

# APPENDIX 2

RCW 34.05.570
Judicial review.

(1) Generally. Except to the extent that this chapter or another statute provides otherwise:

(a) The burden of demonstrating the invalidity of agency action is on the party asserting invalidity;

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken;

(c) The court shall make a separate and distinct ruling on each material issue on which the court's decision is based; and

(d) The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

(2) Review of rules. (a) A rule may be reviewed by petition for declaratory judgment filed pursuant to this subsection or in the context of any other review proceeding under this section. In an action challenging the validity of a rule, the agency shall be made a party to the proceeding.

(b)(i) The validity of any rule may be determined upon petition for a declaratory judgment addressed to the superior court of Thurston county, when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner. The declaratory judgment order may be entered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

(ii) From June 10, 2004, until July 1, 2008:

(A) If the petitioner's residence or principal place of business is within the geographical boundaries of the third division of the court of appeals as defined by RCW 2.06.020(3), the petition may be filed in the superior court of Spokane, Yakima, or Thurston county; and

(B) If the petitioner's residence or principal place of business is within the geographical boundaries of district three of the first division of the court of appeals as defined by RCW 2.06.020(1), the petition may be filed in the superior court of Whatcom or Thurston county.

(c) In a proceeding involving review of a rule, the court shall declare the rule invalid only if it finds that: The rule violates constitutional provisions; the rule exceeds the statutory authority of the agency; the rule was adopted without compliance with statutory rule-making procedures; or the rule is arbitrary and capricious.

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

(f) The agency has not decided all issues requiring resolution by the agency;

(g) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) The order is arbitrary or capricious.

(4) Review of other agency action.

(a) All agency action not reviewable under subsection (2) or (3) of this section shall be reviewed under this subsection.

(b) A person whose rights are violated by an agency's failure to perform a duty that is required by law to be performed may file a petition for review pursuant to RCW 34.05.514, seeking an order pursuant to this subsection requiring performance. Within twenty days after service of the petition for review, the agency shall file and serve an answer to the petition, made in the same manner as an answer to a complaint in a civil action. The court may hear evidence, pursuant to RCW 34.05.562, on material issues of fact raised by the petition and answer.

(c) Relief for persons aggrieved by the performance of an agency action, including the exercise of discretion, or an action under (b) of this subsection can be granted only if the court determines that the action is:

(i) Unconstitutional;

(ii) Outside the statutory authority of the agency or the authority conferred by a provision of law;

(iii) Arbitrary or capricious; or

(iv) Taken by persons who were not properly constituted as agency officials lawfully entitled to take such action.

[2004 c 30 § 1; 1995 c 403 § 802; 1989 c 175 § 27; 1988 c 288 § 516; 1977 ex.s. c 52 § 1; 1967 c 237 § 6; 1959 c 234 § 13. Formerly RCW 34.04.130.]

Notes:

**Findings -- Short title -- Intent -- 1995 c 403:** See note following RCW 34.05.328.

**Part headings not law -- Severability -- 1995 c 403:** See RCW 43.05.903 and 43.05.904.

**Effective date -- 1989 c 175:** See note following RCW 34.05.010.

RCW 36.70A.030
Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

(2) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by *RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

(3) "City" means any city or town, including a code city.

(4) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

(5) "Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas.

(6) "Department" means the department of commerce.

(7) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

(8) "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under *RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forest land to other uses.

(9) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

(10) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

(11) "Minerals" include gravel, sand, and valuable metallic substances.

(12) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(13) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(14) "Recreational land" means land so designated under **RCW 36.70A.1701 and that, immediately prior to this designation, was designated as agricultural land of long-term commercial significance under RCW 36.70A.170. Recreational land must have playing fields and supporting facilities existing before July 1, 2004, for sports played on grass playing fields.

(15) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

(16) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

(17) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

(18) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

(19) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(20) "Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

(21) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

[2009 c 565 § 22; 2005 c 423 § 2; 1997 c 429 § 3; 1995 c 382 § 9. Prior: 1994 c 307 § 2; 1994 c 257 § 5; 1990 1st ex.s. c 17 § 3.]

Notes:

**Reviser's note:** *(1) RCW 84.33.100 through 84.33.118 were repealed or decodified by 2001 c 249 §§ 15 and 16. RCW 84.33.120 was repealed by 2001 c 249 § 16 and by 2003 c 170 § 7.

**(2) RCW 36.70A.1701 expired June 30, 2006.

(3) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**Intent -- 2005 c 423:** "The legislature recognizes the need for playing fields and supporting facilities for sports played on grass as well as the need to preserve agricultural land of long-term commercial significance. With thoughtful and deliberate planning, and adherence to the goals and requirements of the growth management act, both needs can be met.

The legislature acknowledges the state's interest in preserving the agricultural industry and family farms, and recognizes that the state's rich and productive lands enable agricultural production. Because of its unique qualities and limited quantities, designated agricultural land of long-term commercial significance is best suited

for agricultural and farm uses, not recreational uses.

The legislature acknowledges also that certain local governments have either failed or neglected to properly plan for population growth and the sufficient number of playing fields and supporting facilities needed to accommodate this growth. The legislature recognizes that citizens responded to this lack of planning, fields, and supporting facilities by constructing nonconforming fields and facilities on agricultural lands of long-term commercial significance. It is the intent of the legislature to permit the continued existence and use of these fields and facilities in very limited circumstances if specific criteria are satisfied within a limited time frame. It is also the intent of the legislature to grant this authorization without diminishing the designation and preservation requirements of the growth management act pertaining to Washington's invaluable farmland." [2005 c 423 § 1.]

**Effective date -- 2005 c 423:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2005]." [2005 c 423 § 7.]

**Prospective application -- 1997 c 429 §§ 1-21:** See note following RCW 36.70A.3201.

**Severability -- 1997 c 429:** See note following RCW 36.70A.3201.

**Finding -- Intent -- 1994 c 307:** "The legislature finds that it is in the public interest to identify and provide long-term conservation of those productive natural resource lands that are critical to and can be managed economically and practically for long-term commercial production of food, fiber, and minerals. Successful achievement of the natural resource industries' goal set forth in RCW 36.70A.020 requires the conservation of a land base sufficient in size and quality to maintain and enhance those industries and the development and use of land use techniques that discourage uses incompatible to the management of designated lands. The 1994 amendment to RCW 36.70A.030(8) (section 2(8), chapter 307, Laws of 1994) is intended to clarify legislative intent regarding the designation of forest lands and is not intended to require every county that has already complied with the interim forest land designation requirement of RCW 36.70A.170 to review its actions until the adoption of its comprehensive plans and development regulations as provided in RCW 36.70A.060 (3)." [1994 c 307 § 1.]

**Effective date -- 1994 c 257 § 5:** "Section 5 of this act shall take effect July 1, 1994." [1994 c 257 § 25.]

**Severability -- 1994 c 257:** See note following RCW 36.70A.270.

RCW 36.70A.130
Comprehensive plans — Review procedures and schedules — Amendments.

(1)(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. Except as otherwise provided, a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section.

(b) Except as otherwise provided, a county or city not planning under RCW 36.70A.040 shall take action to review and, if needed, revise its policies and development regulations regarding critical areas and natural resource lands adopted according to this chapter to ensure these policies and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefor.

(c) The review and evaluation required by this subsection may be combined with the review required by subsection (3) of this section. The review and evaluation required by this subsection shall include, but is not limited to, consideration of critical area ordinances and, if planning under RCW 36.70A.040, an analysis of the population allocated to a city or county from the most recent ten-year population forecast by the office of financial management.

(d) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.

(2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year. "Updates" means to review and revise, if needed, according to subsection (1) of this section, and the deadlines in subsections (4) and (5) of this section or in accordance with the provisions of subsection (6) of this section. Amendments may be considered more frequently than once per year under the following circumstances:

(i) The initial adoption of a subarea plan. Subarea plans adopted under this subsection (2)(a)(i) must clarify, supplement, or implement jurisdiction-wide comprehensive plan policies, and may only be adopted if the cumulative impacts of the proposed plan are addressed by appropriate environmental review under chapter 43.21C RCW;

(ii) The development of an initial subarea plan for economic development located outside of the one hundred year floodplain in a county that has completed a state-funded pilot project that is based on watershed characterization and local habitat assessment;

(iii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW;

(iv) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget; or

(v) The adoption of comprehensive plan amendments necessary to enact a planned action under RCW 43.21C.031(2), provided that amendments are considered in accordance with the public participation program established by the county or city under this subsection (2)(a) and all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment.

(b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with the growth management hearings board or with the court.

(3)(a) Each county that designates urban growth areas under RCW 36.70A.110 shall review, at least every ten years, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

(b) The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by RCW 36.70A.215.

(4) Except as provided in subsection (6) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of

this chapter as follows:

(a) On or before December 1, 2004, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

(b) On or before December 1, 2005, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;

(c) On or before December 1, 2006, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and

(d) On or before December 1, 2007, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(5) Except as otherwise provided in subsection (6) of this section, following the review of comprehensive plans and development regulations required by subsection (4) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:

(a) On or before December 1, 2014, and every seven years thereafter, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

(b) On or before December 1, 2015, and every seven years thereafter, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;

(c) On or before December 1, 2016, and every seven years thereafter, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and

(d) On or before December 1, 2017, and every seven years thereafter, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(6)(a) Nothing in this section precludes a county or city from conducting the review and evaluation required by this section before the deadlines established in subsections (4) and (5) of this section. Counties and cities may begin this process early and may be eligible for grants from the department, subject to available funding, if they elect to do so.

(b) A county that is subject to a deadline established in subsection (4)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the thirty-six months following the deadline established in subsection (4) of this section: The county has a population of less than fifty thousand and has had its population increase by no more than seventeen percent in the ten years preceding the deadline established in subsection (4) of this section as of that date.

(c) A city that is subject to a deadline established in subsection (4)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the thirty-six months following the deadline established in subsection (4) of this section: The city has a population of no more than five thousand and has had its population increase by the greater of either no more than one hundred persons or no more than seventeen percent in the ten years preceding the deadline established in subsection (4) of this section as of that date.

(d) A county or city that is subject to a deadline established in subsection (4)(d) of this section and that meets the criteria established in subsection (6)(b) or (c) of this section may comply with the requirements of subsection (4)(d) of this section at any time within the thirty-six months after the extension provided in subsection (6)(b) or (c) of this section.

(e) State agencies are encouraged to provide technical assistance to the counties and cities in the review of critical area ordinances, comprehensive plans, and development regulations.

(7)(a) The requirements imposed on counties and cities under this section shall be considered "requirements of this chapter" under the terms of RCW 36.70A.040(1). Only those counties and cities that meet the following criteria may receive grants, loans, pledges, or financial guarantees under chapter 43.155 or 70.146 RCW:

(i) Complying with the deadlines in this section;

(ii) Demonstrating substantial progress towards compliance with the schedules in this section for development regulations that protect critical areas; or

(iii) Complying with the extension provisions of subsection (6)(b), (c), or (d) of this section.

(b) A county or city that is fewer than twelve months out of compliance with the schedules in this section for development

regulations that protect critical areas is making substantial progress towards compliance. Only those counties and cities in compliance with the schedules in this section may receive preference for grants or loans subject to the provisions of RCW 43.17.250.

[2010 c 216 § 1; 2010 c 211 § 2; 2009 c 479 § 23; 2006 c 285 § 2. Prior: 2005 c 423 § 6; 2005 c 294 § 2; 2002 c 320 § 1; 1997 c 429 § 10; 1995 c 347 § 106; 1990 1st ex.s. c 17 § 13.]

Notes:

**Reviser's note:** This section was amended by 2010 c 211 § 2 and by 2010 c 216 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date -- Transfer of power, duties, and functions -- 2010 c 211:** See notes following RCW 36.70A.250.

**Effective date -- 2009 c 479:** See note following RCW 2.56.030.

**Intent -- 2006 c 285:** "There is a statewide interest in maintaining coordinated planning as called for in the legislative findings of the growth management act, RCW 36.70A.010. It is the intent of the legislature that smaller, slower-growing counties and cities be provided with flexibility in meeting the requirements to review local plans and development regulations in RCW 36.70A.130, while ensuring coordination and consistency with the plans of neighboring cities and counties." [2006 c 285 § 1.]

**Intent -- Effective date -- 2005 c 423:** See notes following RCW 36.70A.030.

**Intent -- 2005 c 294:** "The legislature recognizes the importance of appropriate and meaningful land use measures and that such measures are critical to preserving and fostering the quality of life enjoyed by Washingtonians. The legislature recognizes also that the growth management act requires counties and cities to review and, if needed, revise their comprehensive plans and development regulations on a cyclical basis. These requirements, which often require significant compliance efforts by local governments are, in part, an acknowledgment of the continual changes that occur within the state, and the need to ensure that land use measures reflect the collective wishes of its citizenry.

The legislature acknowledges that only those jurisdictions in compliance with the review and revision schedules of the growth management act are eligible to receive funds from the public works assistance and water quality accounts in the state treasury. The legislature further recognizes that some jurisdictions that are not yet in compliance with these review and revision schedules have demonstrated substantial progress towards compliance.

The legislature, therefore, intends to grant jurisdictions that are not in compliance with requirements for development regulations that protect critical areas, but are demonstrating substantial progress towards compliance with these requirements, twelve months of additional eligibility to receive grants, loans, pledges, or financial guarantees from the public works assistance and water quality accounts in the state treasury. The legislature intends to specify, however, that only counties and cities in compliance with the review and revision schedules of the growth management act may receive preference for financial assistance from these accounts." [2005 c 294 § 1.]

**Effective date -- 2005 c 294:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 5, 2005]." [2005 c 294 § 3.]

**Prospective application -- 1997 c 429 §§ 1-21:** See note following RCW 36.70A.3201.

**Severability -- 1997 c 429:** See note following RCW 36.70A.3201.

**Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347:** See notes following RCW 36.70A.470.

RCW 36.70A.130(2) does not apply to master planned locations in industrial land banks: RCW 36.70A.367(2)(c).

RCW 36.70A.302
Growth management hearings board — Determination of invalidity — Vesting of development permits — Interim controls.

(1) The board may determine that part or all of a comprehensive plan or development regulations are invalid if the board:

(a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;

(b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and

(c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

(2) A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the county or city or to related construction permits for that project.

(3)(a) Except as otherwise provided in subsection (2) of this section and (b) of this subsection, a development permit application not vested under state or local law before receipt of the board's order by the county or city vests to the local ordinance or resolution that is determined by the board not to substantially interfere with the fulfillment of the goals of this chapter.

(b) Even though the application is not vested under state or local law before receipt by the county or city of the board's order, a determination of invalidity does not apply to a development permit application for:

(i) A permit for construction by any owner, lessee, or contract purchaser of a single-family residence for his or her own use or for the use of his or her family on a lot existing before receipt by the county or city of the board's order, except as otherwise specifically provided in the board's order to protect the public health and safety;

(ii) A building permit and related construction permits for remodeling, tenant improvements, or expansion of an existing structure on a lot existing before receipt of the board's order by the county or city; and

(iii) A boundary line adjustment or a division of land that does not increase the number of buildable lots existing before receipt of the board's order by the county or city.

(4) If the ordinance that adopts a plan or development regulation under this chapter includes a savings clause intended to revive prior policies or regulations in the event the new plan or regulations are determined to be invalid, the board shall determine under subsection (1) of this section whether the prior policies or regulations are valid during the period of remand.

(5) A county or city subject to a determination of invalidity may adopt interim controls and other measures to be in effect until it adopts a comprehensive plan and development regulations that comply with the requirements of this chapter. A development permit application may vest under an interim control or measure upon determination by the board that the interim controls and other measures do not substantially interfere with the fulfillment of the goals of this chapter.

(6) A county or city subject to a determination of invalidity may file a motion requesting that the board clarify, modify, or rescind the order. The board shall expeditiously schedule a hearing on the motion. At the hearing on the motion, the parties may present information to the board to clarify the part or parts of the comprehensive plan or development regulations to which the final order applies. The board shall issue any supplemental order based on the information provided at the hearing not later than thirty days after the date of the hearing.

(7)(a) If a determination of invalidity has been made and the county or city has enacted an ordinance or resolution amending the invalidated part or parts of the plan or regulation or establishing interim controls on development affected by the order of invalidity, after a compliance hearing, the board shall modify or rescind the determination of invalidity if it determines under the standard in subsection (1) of this section that the plan or regulation, as amended or made subject to such interim controls, will no longer substantially interfere with the fulfillment of the goals of this chapter.

(b) If the board determines that part or parts of the plan or regulation are no longer invalid as provided in this subsection, but does not find that the plan or regulation is in compliance with all of the requirements of this chapter, the board, in its order, may require periodic reports to the board on the progress the jurisdiction is making towards compliance.

[2010 c 211 § 10; 1997 c 429 § 16.]

Notes:

**Effective date -- Transfer of power, duties, and functions -- 2010 c 211:** See notes following RCW 36.70A.250.

**Prospective application -- 1997 c 429 §§ 1-21:** See note following RCW 36.70A.3201.

**Severability -- 1997 c 429:** See note following RCW 36.70A.3201.

RCW 36.70A.320
Presumption of validity — Burden of proof — Plans and regulations.

(1) Except as provided in subsection (5) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.

(2) Except as otherwise provided in subsection (4) of this section, the burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this chapter is not in compliance with the requirements of this chapter.

(3) In any petition under this chapter, the board, after full consideration of the petition, shall determine whether there is compliance with the requirements of this chapter. In making its determination, the board shall consider the criteria adopted by the department under RCW 36.70A.190(4). The board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.

(4) A county or city subject to a determination of invalidity made under RCW 36.70A.300 or 36.70A.302 has the burden of demonstrating that the ordinance or resolution it has enacted in response to the determination of invalidity will no longer substantially interfere with the fulfillment of the goals of this chapter under the standard in RCW 36.70A.302(1).

(5) The shoreline element of a comprehensive plan and the applicable development regulations adopted by a county or city shall take effect as provided in chapter 90.58 RCW.

[1997 c 429 § 20; 1995 c 347 § 111; 1991 sp.s. c 32 § 13.]

Notes:

**Prospective application -- 1997 c 429 §§ 1-21:** See note following RCW 36.70A.3201.

**Severability -- 1997 c 429:** See note following RCW 36.70A.3201.

**Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347:** See notes following RCW 36.70A.470.

RCW 36.70A.3201
Growth management hearings board — Legislative intent and finding.

The legislature intends that the board applies a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard provided for under existing law. In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the board to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.

[2010 c 211 § 12; 1997 c 429 § 2.]

Notes:

**Effective date -- Transfer of power, duties, and functions -- 2010 c 211:** See notes following RCW 36.70A.250.

**Prospective application -- 1997 c 429 §§ 1-21:** "Except as otherwise specifically provided in RCW 36.70A.335, sections 1 through 21, chapter 429, Laws of 1997 are prospective in effect and shall not affect the validity of actions taken or decisions made before July 27, 1997." [1997 c 429 § 53.]

**Severability -- 1997 c 429:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 429 § 54.]

WAC 365-190-050
Agricultural resource lands.

(1) In classifying and designating agricultural resource lands, counties must approach the effort as a county-wide or area-wide process. Counties and cities should not review resource lands designations solely on a parcel-by-parcel process. Counties and cities must have a program for the transfer or purchase of development rights prior to designating agricultural resource lands in urban growth areas. Cities are encouraged to coordinate their agricultural resource lands designations with their county and any adjacent jurisdictions.

(2) Once lands are designated, counties and cities planning under the act must adopt development regulations that assure the conservation of agricultural resource lands. Recommendations for those regulations are found in WAC 365-196-815.

(3) Lands should be considered for designation as agricultural resource lands based on three factors:

(a) The land is not already characterized by urban growth. To evaluate this factor, counties and cities should use the criteria contained in WAC 365-196-310.

(b) The land is used or capable of being used for agricultural production. This factor evaluates whether lands are well suited to agricultural use based primarily on their physical and geographic characteristics. Some agricultural operations are less dependent on soil quality than others, including some livestock production operations.

(i) Lands that are currently used for agricultural production and lands that are capable of such use must be evaluated for designation. The intent of a landowner to use land for agriculture or to cease such use is not the controlling factor in determining if land is used or capable of being used for agricultural production. Land enrolled in federal conservation reserve programs is recommended for designation based on previous agricultural use, management requirements, and potential for reuse as agricultural land.

(ii) In determining whether lands are used or capable of being used for agricultural production, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Natural Resources Conservation Service as defined in relevant Field Office Technical Guides. These eight classes are incorporated by the United States Department of Agriculture into map units described in published soil surveys, and are based on the growing capacity, productivity and soil composition of the land.

(c) The land has long-term commercial significance for agriculture. In determining this factor, counties and cities should consider the following nonexclusive criteria, as applicable:

(i) The classification of prime and unique farmland soils as mapped by the Natural Resources Conservation Service;

(ii) The availability of public facilities, including roads used in transporting agricultural products;

(iii) Tax status, including whether lands are enrolled under the current use tax assessment under chapter 84.34 RCW and whether the optional public benefit rating system is used locally, and whether there is the ability to purchase or transfer land development rights;

(iv) The availability of public services;

(v) Relationship or proximity to urban growth areas;

(vi) Predominant parcel size;

(vii) Land use settlement patterns and their compatibility with agricultural practices;

(viii) Intensity of nearby land uses;

(ix) History of land development permits issued nearby;

(x) Land values under alternative uses; and

(xi) Proximity to markets.

(4) When designating agricultural resource lands, counties and cities may consider food security issues, which may include providing local food supplies for food banks, schools and institutions, vocational training opportunities in agricultural operations, and preserving heritage or artisanal foods.

(5) When applying the criteria in subsection (3)(c) of this section, the process should result in designating an amount of agricultural resource lands sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long term; and to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities.

(6) Counties and cities may further classify additional agricultural lands of local importance. Classifying additional agricultural lands of local importance should include, in addition to general public involvement, consultation with the board of the local conservation district and the local committee of the farm service agency. It may also be useful to consult with any existing local organizations marketing or using local produce, including the boards of local farmers markets, school districts, other large institutions, such as hospitals, correctional facilities, or existing food cooperatives.

These additional lands may include designated critical areas, such as bogs used to grow cranberries or farmed wetlands. Where these lands are also designated critical areas, counties and cities planning under the act must weigh the compatibility of adjacent land uses and development with the continuing need to protect the functions and values of critical areas and ecosystems.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. 10-22-103, § 365-190-050, filed 11/2/10, effective 12/3/10; 10-03-085, § 365-190-050, filed 1/19/10, effective 2/19/10. Statutory Authority: RCW 36.70A.050. 91-07-041, § 365-190-050, filed 3/15/91, effective 4/15/91.]

NO. _____
Court of Appeals No. 39546-1-II



IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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CLARK COUNTY, WASHINGTON and CITY OF LA CENTER,
Petitioners for Review,

GM CAMAS, LLC., MacDONALD LIVING TRUST and
RENAISSANCE HOMES,
Respondents Below,

v.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS REVIEW BOARD, JOHN KARPINSKI, CLARK COUNTY NATURAL RESOURCES COUNCIL and FUTUREWISE,
Appellants.

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## CERTIFICATE OF SERVICE

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I, Thelma Kremer, hereby certify and state the following: I am a citizen of the United States of America and a resident of the State of Washington; I am over the age of eighteen years; I am not a party to this action; and I am competent to be a witness herein.

On this 13th day of May, 2011, I caused true and correct copies of *Joint Petition for Review of Clark County and City of La Center* and *Certificate of Service* to be served on the following parties by email and by U.S. mail, postage prepaid, at the following addresses:

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DATED this 13th day of May, 2011.

Thelma Kremer

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**To:** 'Kremer, Thelma'
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Attached for filing, please find copies of the Joint Petition for Review of Clark County and City of La Center and Certificate of Service regarding the above-entitled action.

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